

(23,108)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 588.

LOUIS ATHANASAW AND MITCHELL SAMPSON,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

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1 In the District Court of the United States in and for the Southern District of Florida.

THE UNITED STATES

VS.

LOUIS ATHANASAW and MITCHELL SAMPSON.

Be It Remembered That at a term of the Circuit Court of the United States for the Southern District of Florida, at a term of said Court held in the City of Jacksonville Florida on the 16th day of December, A. D., 1911, in open court came the Grand Jurors and presented an indictment against the defendants, which said indictment is in words and figures following, to-wit:

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

In the Circuit Court of the United States in and for the Southern District of Florida, at the December Term Thereof, A. D. 1911.

The Grand Jurors of the United States, impaneled, sworn and charged at the Term aforesaid, of the Court aforesaid, on their oath present, that one Louis Athanasaw and one Mitchell Sampson on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly cause to be transported in interstate commerce, to-wit: from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, a certain female person, to-wit: one Agnes Couch for the purpose of debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

2 2. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September A. D., 1911, within the jurisdiction of said Court, did knowingly aid in obtaining transportation, in interstate commerce, to-wit: from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, for a certain female person, to-wit—one Agnes Couch for the purpose of debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

3. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D. 1911, within the jurisdiction of said Court, did knowingly assist in obtaining transportation in interstate commerce, to-wit: from Atlanta in the State of Georgia, to Tampa, within the State of Florida and within the Southern District of Florida, for a certain female person, to-wit: one Agnes Couch, for the purpose of debauchery; contrary to the form

of the statute in such case made and provided and against the peace and dignity of the said United States.

4. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly cause to be transported, in interstate commerce, to-wit: from Atlanta, in the State of Georgia, to Tampa, within the State of Florida and within the

3 Southern District of Florida, a certain female person, to-wit: one Agnes Couch, with intent and purpose of him, the said Louis Athanasaw and of him, the said Mitchell Sampson, to induce such female person to give herself up to debauchery; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

5. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly aid in obtaining transportation in interstate commerce, to-wit: from Atlanta, in the State of Georgia, to Tampa, within the State of Florida and within the Southern District of Florida, for a certain female person, to-wit: one Agnes Couch with intent and purpose of him, the said Louis Athanasaw, and of him, the said Mitchell Sampson, to induce such female person to give herself up to debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

6. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly assist in obtaining transportation, in interstate commerce, to-wit: from Atlanta in the State of Georgia, to Tampa within the State of Florida and within the Southern District of Florida, for a certain female person, to-wit: one Agnes Couch, with intent and purpose of him, the said Louis Athanasaw, and of him, the said Mitchell Sampson, to induce such female person to give herself up to debauchery; contrary to the

4 form of the statute in such case made and provided and against the peace and dignity of the said United States.

7. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said Court, did knowingly cause to be transported, in interstate commerce, to-wit: From Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, a certain female person, to-wit: one Agnes Couch, with intent and purpose of him, the said Louis Athanasaw, and of him, the said Mitchell Sampson, to induce such female person to give herself up to debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

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further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly aid in obtaining transportation, in interstate commerce, to-wit: from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, for a certain female person, to-wit: one Agnes Couch, with intent and purpose of him, the said Louis Athanasaw and of him, the said Mitchell Sampson, to entice such female person to give herself up to debauchery; contrary to the form of the Statute in such case made and provided and against the peace and dignity of the said United States.

9. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly assist in obtaining transportation, in interstate commerce, to-wit: from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, for a certain female person, to-wit: one Agnes Couch with intent and purpose of him, the said Louis Athanasaw and of him, the said Mitchell Sampson to entice such female person to give herself up to debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

10. And the Grand Jurors aforesaid, on their oath aforesaid, do further present that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September, A. D. 1911 within the jurisdiction of said court, did knowingly cause to be transported, in interstate commerce, to-wit: from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, a certain female person, to-wit: one Agnes Couch with the intent and purpose of him, the said Louis Athanasaw and of him, the said Mitchell Sampson to compel such female person to give herself up to debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

11. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly aid in obtaining transportation, in interstate commerce, to-wit: from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, for a certain female person, to-wit: one Agnes Couch, with intent and purpose of him, the said Louis Athanasaw and of him, the said Mitchell Sampson to compel such female person to give herself up to debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

12. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly assist in obtaining trans-

portation, in interstate commerce, to-wit: from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, for a certain female person to-wit: one Agnes Couch, with intent and purpose of to compel such female person to give herself up to debauchery; contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

13. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly procure a ticket to be used by a certain girl, to-wit: one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, for the purpose of debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

14. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly obtain a ticket to be used by a certain girl, to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida, and within the Southern District of Florida, for the purpose of debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

15. And the Grand Jurors aforesaid, on their oath aforesaid, do present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly cause to be procured a ticket to be used by a certain girl, to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, for the purpose of debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

16. And the Grand Jurors aforesaid, on their oath aforesaid, do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September, A. D., 1911, within the jurisdiction of said court, did knowingly cause to be obtained a ticket to be used by a certain girl to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta

in the State of Georgia to Tampa within the State of Florida, and within the Southern District of Florida, for the purpose of debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

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14 the said Agnes Couch, to give herself up to debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

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31. And the Grand Jurors aforesaid, on their oath aforesaid do further present, that the said Louis Athanasaw and the said Mitchell Sampson, on the 8th day of September A. D. 1911 within the jurisdiction of said court, did knowingly cause to be procured a ticket to be used by a certain girl to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, with the intent on the part of him, the said Louis Athanasaw and of him, the said Mitchell Sampson to induce

15 her, the said Agnes Couch to give herself up to debauchery and whereby the said Agnes Couch was transported by train

in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

32. And the Grand Jurors aforesaid, on their oath aforesaid do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September A. D. 1911 within the jurisdiction of said court, did knowingly cause to be obtained a ticket to be used by a certain woman to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, with the intent on the part of him, the said Louis Athanasaw, and of him, the said Mitchell Sampson, to induce her, the said Agnes Couch to give herself up to debauchery, and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

33. And the Grand Jurors aforesaid, on their oath aforesaid do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September A. D. 1911 within the jurisdiction of said court, did knowingly aid in procuring a ticket to be used by a certain woman to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, with the intent on the part of him, the said Louis

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35. And the Grand Jurors aforesaid, on their oath aforesaid do further present, that the said Louis Athanasaw and the said Mitchell

Sampson on the 8th day of September A. D. 1911 within the jurisdiction of said court, did knowingly aid in obtaining a ticket to be used by a certain girl to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to — within the State of Florida and within the Southern District of Florida, with the intent on the part of him the said Louis Athanasaw, and of him the said Mitchell Sampson, to induce her,

17 the said Agnes Couch to give herself up to debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

36. And the Grand Jurors aforesaid, on their oath aforesaid do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September A. D. 1911 within the jurisdiction of said court, did knowingly assist in obtaining a ticket to be used by a certain girl to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, with the intent on the part of him, the said Louis Athanasaw and of him, the said Mitchell Sampson, to induce her, the said Agnes Couch to give herself up to debauchery, and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

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18 Athanasaw and of him, the said Mitchell Sampson to entice her, the said Agnes Couch to give herself up to debauchery on, and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

38. And the Grand Jurors aforesaid, on their oath aforesaid do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September A. D. 1911 within the jurisdiction of said court, did knowingly obtain a ticket to be used by a certain woman to-wit, one Agnes Couch in interstate commerce; that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the Southern District of Florida, with the intent on the part of him, the said Louis Athan-

asaw and of him, the said Mitchell Sampson to entice her, the said Agnes Couch to give herself up to debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

39. And the Grand Jurors aforesaid, on their oath aforesaid do further present, that the said Louis Athanasaw and the said Mitchell Sampson on the 8th day of September A. D. 1911 within the jurisdiction of said court, did knowingly cause to be procured a ticket to be used by a certain girl to-wit, one Agnes Couch in interstate commerce. that is to say, in going from Atlanta in the State of Georgia to Tampa within the State of Florida and within the South-

19 ern District of Florida, with the purpose on the part of him, the said Louis Athanasaw and of him, the said Mitchell Sampson to entice her, the said Agnes Couch to give herself up to debauchery and whereby the said Agnes Couch was transported by train in interstate commerce from Atlanta in the State of Georgia to Tampa aforesaid in the State of Florida, contrary to the statute in such case made and provided, and against the peace and dignity of the said United States.

(Signed)

RICHARD P. MARKS,

Asst U. S. Attorney.

And which said indictment is endorsed on the back thereof as follows: "No. 35. Circuit Court of the United States for the — Division of the Southern District of Fla. The United States vs. Louis Athanasaw and Mitchell Sampson. Indictment White Slave Act. A True Bill. Jos. L. Guernsey, Foreman. Filed Dec. 16, A. D., 1911. E. O. Locke, Clerk."

And afterwards, on the 20th day of February, A. D., 1912. at a term of the United States District Court for the Southern District of Florida, in open court, came the defendants in person, and by their attorneys, and came also the District Attorney of the United States.

And thereupon the defendants having been duly arraigned, filed the following demurrer to the indictment in said cause, and each count thereof, in words and figures following:

In the District Court of the United States for the Southern District of Florida.

(Transferred from the Circuit Court.)

Now come the defendants, and each of them, and say that the indictment, and each count thereof, is bad in substance and in law, and demur to each count severally.

W. A. CARTER,
JOHN P. WALL,
Attorneys for Defendants.

20 And for substantial matters of law to be argued to the court as to each count in said indictment contained the defendants state the following:

A. The Act of Congress under which the said indictment is found is unconstitutional and void:

First, for the reason that there is no grant of power by the Constitution to Congress to legislate upon the subject.

Second, because the said act of Congress in no way directly affects any subject matter over which Congress has jurisdiction.

Third, because the act sought to be punished by the act of Congress is one wholly within the police power of the several states.

B. Said indictment fails to state the persons sought to be debauched.

C. The said indictment fails to allege that the purpose of debauchery existed in the minds of the defendants.

D. The said indictment fails to allege that the purpose of debauchery existed in the minds of the defendants at any time prior to or during the transportation of the woman.

E. Said indictment is bad for the reason that there is no allegation that the woman was actually transported in interstate commerce.

W. A. CARTER,
JOHN P. WALL,
Attorneys for Defendants.

I, W. A. Carter, of counsel for defendants, hereby certify in my opinion the foregoing demurrer is well founded in law.

W. A. CARTER,
Of Counsel for Defendants.

STATE OF FLORIDA,
County of Hillsborough, ss:

Personally appeared before the undersigned authority Louis Athanasaw and Mitchell Sampson, who being duly sworn say they are the defendants above named, and that the foregoing demurrer is not interposed for delay.

LOUIS ATHANASAW.
MITCHELL SAMPSON.

21 Sworn to and subscribed before me on this 12 day of January, A. D. 1912.

[NOTARIAL SEAL.]

GEORGE P. RANEY, JR.,
Notary Public.

And the court having duly considered the case, did then and there overrule said demurrer.

And thereupon the defendants in person in open court entered their plea of not guilty.

And thereupon came a jury, who were duly sworn to try the issues aforesaid between the parties aforesaid, and the said jury having heard the testimony in said cause, the argument of counsel, and the

charge of the court, retired to their rooms; and thereupon, on the 21st day of February, A. D., 1912, returned into open court, and the defendants being then present, delivered their verdict in words and figures following:

TAMPA, FLORIDA, *February 21st, 1912.*

We, the jury, find the defendants guilty. So say we all as charged in the Indictment.

TAYLOR FRIERSON, *Foreman.*

And thereupon the said Louis Athanasaw was called to the bar of said court and asked if he had anything to say why the sentence of the law should not be passed upon him; and after hearing his statement the said court did pronounce judgment in words and figures following, to-wit:

"Ordered that you, Louis Athanasaw, who have been convicted of a violation of the White Slave Act be imprisoned by confinement at hard labor in the Penitentiary of the United States at Atlanta, Georgia, for two years and six months."

And thereupon the said Mitchell Sampson being called to the bar of the court, and asked whether he had anything to say why the sentence of the law should not be pronounced upon him, the court thereupon imposed the following sentence:

"It is ordered that you, Mitchell Sampson, having been convicted of a violation of the White Slave Act be imprisoned by confinement at hard labor in the Penitentiary of the United States at Atlanta, Georgia, for a period of one year and three months."

22 And thereupon, on the 24th day of February, A. D., 1912, came the defendants in person in open court, and by their counsel, filed their motion in arrest of judgment, in words and figures following:

In the District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA

v.

LOUIS ATHANASAW and MITCHELL SAMPSON.

Now come the defendants in the above entitled cause, in open court, and move the court for arrest of judgment upon the following grounds, to-wit:

1. The act of Congress under which the indictment in this case is found is unconstitutional.

2. The act of Congress under which the indictment is found is not within the powers delegated to Congress by the Constitution of the United States.

3. Because each count of the indictment is bad in that it does not allege that the intent to debauch the said Agnes Couch, or to cause her to be debauched, or to compel, incite, or coerce her to give her-

self up to debauchery is alleged in said indictment to have existed in the minds of either of the defendants at the time of the inception, or during the transportation of the said Agnes Couch.

W. A. CARTER,
WALL & McKAY,
Attorneys for Defendant.

Which said motion being then and there considered by the court, the court did then and there deny said motion on said 24th day of February, A. D., 1912.

And afterwards, to-wit, on the 24th day of February, A. D., 1912, in open court, came the said defendants by their counsel, and filed the following petition for writ of error:

In the District Court of the United States for the Southern District of Florida.

23

THE UNITED STATES OF AMERICA

v.

LOUIS ATHANASAW and MITCHELL SAMPSON.

Now come the defendants in the above entitled cause, and show unto the court that they were on the 24 day of Feb'y A. D., 1912, at a term of said court convicted and sentenced under an Act of Congress approved June 25, 1910, being Chapter 395, and commonly called the "White Slave Act." That in said cause the constitutionality under the Constitution of the United States of said Act of Congress, and the construction thereof, were drawn in question, wherefore they pray this Court for an order allowing the said defendants to prosecute a writ of error to the Honorable Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided; and that also that citation issue, as directed by law, and that this Court will make an order fixing the amount of security which the said defendants shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and staid until the determination of said writ of error by the United States Supreme Court; and also that this Court will grant to the defendants a period of sixty days from the adjournment of this court within which to make up and tender a bill of exceptions; and your petitioners will ever pray.

W. A. CARTER,
WALL & McKAY,
Attorneys for Defendants.

And at the same time came the said defendants in open court, and filed their assignments of error, in words and figures following:

24 In the District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA

v.

LOUIS ATHANASAW and MITCHELL SAMPSON.

Now come the defendants in the above entitled cause and at the time of filing their petition for a writ of error to the Supreme Court of the United States, and assign the following errors, to-wit:

1. The Court erred in overruling the demurrer of the defendants to the indictment, and to each count thereof.

2. The Court erred in holding that the Act under which the defendants were prosecuted, being an Act of Congress commonly called the "White Slave Act" was constitutional.

3. The Court erred in denying the defendants' motion for a new trial.

4. The Court erred in denying the defendants' motion in arrest of judgment.

5. The Court erred in refusing to charge the jury as requested by the defendants, as follows, to-wit:

"The Court instructs the jury that before they can find the defendants or either of them guilty under the indictment in this cause it must be satisfied beyond a reasonable doubt from the evidence that the defendants, or one of them, procured, or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida; and that at the time of the procuring or aiding in the procuring of said transportation the defendants, or one of them, had the intent at that time either themselves to debauch the said Agnes Couch, or to procure her debauchment by some other person, or that they intended to induce, entice, or compel the said Agnes Couch to give herself up to debauchery."

6. The Court erred in refusing to charge the jury as requested by the defendants, as follows, to-wit:

25 "The Court further instructs you that the word "Debauch," as used in the Act of Congress under which the defendants are indicted, and in the indictment in this case, means sexual intercourse between a man and a woman."

7. The Court erred in refusing to charge the jury as requested by the defendants, as follows, to-wit:

"If the jury have a reasonable doubt from all the evidence in this cause that the defendants did not intend at the time of the procuring of the transportation to either themselves debauch the said Agnes Couch, or procure her debauchment by some other person, or to induce, entice, or compel the said Agnes Couch to give herself up to debauchery, then the jury must acquit the defendants."

8. The Court erred in charging the jury as follows, to-wit:

"The Court instructs you that before you can find the defendants or either of them guilty under the indictment in this case, you must be satisfied beyond a reasonable doubt from the evidence that the

defendants, or one of them, procured, or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida, and at the time of the procuring or aiding in the procuring of said transportation the defendants both or one of them, had the intent at the time to employ said Agnes Couch in a position and put her under conditions which would induce or incite her to be lead into a condition of debauchery that would tend to immoral sexual intercourse."

9. The Court erred in charging the jury as follows, to-wit:

"Now, Gentlemen, the Congress of the United States has provided that any person who shall transport or cause to be transported or aid or assist to obtain transportation in interstate commerce (which means from one state to another) of any woman or girl for the purpose of debauchery, shall be guilty of a felony, and upon conviction shall be punished in accordance with law. Unquestionably this Act, although it originated for the purpose of protecting these poor unfortunate women, who, by accident or otherwise had placed
26 themselves under the control of unscrupulous persons, yet the language of the law is direct and positive in its terms and meaning, and should be construed to do everything that the United States Congress has a legal right to do and has used language with the intention to prevent and break up vice and immorality."

10. The Court erred in charging the jury as follows:

"It has been proven and admitted that Agnes Couch came to Tampa at the procurement of the defendants who furnished her transportation by furnishing tickets for that purpose. The only remaining question is whether Agnes Couch was brought here for the purpose of debauchery; that is the vital point in this case; and in determining it you will examine carefully all of the testimony in connection with the procuring of her coming. It is to a certain extent a case of circumstantial evidence; not positive and direct, but circumstantial, to be determined by all of the circumstances surrounding it. And you will examine in determining this question the position into which she was brought, the condition in which she found herself when she came, and the necessary result of such conditions; and determine from all of the testimony what was the purpose of bringing her here, whether or not it was to entice or induce her to give herself up to a life of debauchery."

11. The Court erred in charging the jury as follows, to-wit:

"The intent and purpose of the defendants at the time of the furnishing of this transportation for Agnes Couch is the very gist and question in this case. Did they intend to induce or entice of influence her to give herself up to debauchery? It makes no difference whether the profits which would be made by the defendants came from the sale of liquor or other immoral purpose. The question here is of intent; what was the intent with which they brought her; that she should live an honest, moral and proper life? or that she came and they engaged and contracted with her for the purpose of her entering upon a condition which might be termed debauchery or tends to or would necessarily and naturally lead her to a condition of debauchery just refer-ed to."

27 12. The Court erred in charging the jury as follows:

"The term debauchery is not a legal or technical term. There is no allegation that the defendants brought her here with the purpose or with the intent to debauch her; but to induce her or entice her, or influence her to enter upon a course of debauchery. The term debauchery is not a legal or technical term. To debauch is to corrupt in morals or principles; to lead astray morally into dishonest and vicious practices; to corrupt; to lead into unchastity; to debauch. Debauchery then, is an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence, taking up vicious habits. The term debauchery, as used in this Statute, has an idea of sexual immorality; that is, it has the idea of a life which will lead eventually or tends to lead to sexual immorality; not necessarily drunkenness or immorality, but here it leads to the question in this case as to whether or not the influences in which this girl was surrounded by the employment which they called her to did or did not tend to induce her to give herself up to a condition of debauchery which eventually, necessarily and naturally would lead to a course of immorality sexually. That is the question for you to determine, and it is a question that you alone can determine. You have heard the testimony in the case in regard to the circumstances in which she was placed. You have viewed the scene where she was employed. You have examined by the testimony and your observation what was the character and what was the condition or influence in which the girl was placed by the defendants. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature relating to sexual intercourse between man and woman."

13. The Court erred in charging the jury as follows, to-wit:

"Now, it is contended that they must have had a deliberate intent to debauch her when she came here; that either one or the other intended to debauch her or to get somebody else to debauch her. Now, that term debauch is used in a great many instances in law, and the usual connection is to have carnal inter-
 28 course with; but there is no such language in this Statute, nor is it the language of the indictment. The Charge of the indictment in substance is that they induced or influenced her to enter into a life or condition of debauchery—"to induce or compel her to give herself up to debauchery."

W. A. CARTER,
 WALL & McKAY,
Attorneys for the Defendants.

And thereupon the said court did then and there make an order in words and figures following, to-wit:

In the District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA

V.

LOUIS ATHANASAW and MITCHELL SAMPSON.

At a stated term of said Court, to-wit, the February Term, A. D., 1912, of the said District Court for the Southern District of Florida, held in the City of Tampa, Florida, on the 24th day of February A. D., 1912.

Present the Hon. James W. Locke, District Judge.

Upon the motion of W. A. Carter and Wall & McKay, attorneys for defendants; and upon filing a petition for writ of error and assignments of errors, it is,

Ordered that a writ of error be, and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore rendered; and that the amount of a supercedens bond is fixed at the sum of Five Thousand dollars for each of said defendants; and that citation issue, as required by law; and that the said defendants be allowed a period of sixty days within which to make up and tender a bill of exceptions.

29 Done and ordered in open court this 24 day of Feb'y A. D., 1912.

JAMES W. LOCKE,
District Judge.

And at the same time the said judge did make the following certificate:

In the District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA

V.

LOUIS ATHANASAW and MITCHELL SAMPSON.

In this cause, I, James W. Locke, District Judge, Do Hereby Certify that in the cause aforementioned there was directly involved the constitutionality and construction of an Act of Congress, to-wit, Chapter 395, being an act approved June 25, 1910, commonly called the "White Slave Act."

Feb'y 24, 1912.

JAMES W. LOCKE,
District Judge.

And thereupon, upon the said 24th day of February, A. D., 1912, a writ of error in said cause, in words and figures following was duly issued:

THE UNITED STATES OF AMERICA:

The President of the United States of America to the Judge of the District Court of the United States for the Southern District of Florida, Greeting:

Because in the records and proceedings, and also in the rendition of a judgment of a plea which is in said District Court before you between the United States of America, plaintiff, and Louis Athanasaw and Mitchell Sampson, defendants, manifest error hath happened to the great damage of the said Louis Athanasaw and Mitchell Sampson, as by their complaint appears; we being 30 willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, on the 25th day of March next, in the Supreme Court to be then and there held, that the record and proceedings held aforesaid being then inspected the said Supreme Court may cause further to be done to correct that error, what of right, according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, on the 24 day of February A. D., 1912.

[Seal of District Court of United States, Southern District of Fla.]

E. O. LOCKE,
*Clerk of the District Court of the United States
for the Southern District of Florida,*
By W. R. WATKINS,
Deputy Clerk.

Allowed by

JAMES W. LOCKE,
*District Judge of the Southern
District of Florida.*

Which said writ of error was duly filed in the District Court of the United States for the Southern District of Florida on the 24th day of February, A. D., 1912.

And at the same time the said judge did issue a citation in words and figures following, to-wit:

THE UNITED STATES OF AMERICA:

31 The President of the United States to the United States of America and John M. Cheney, District Attorney of the United States for the Southern District of Florida, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held in the City of Washington within thirty days from the date of this writ, pursuant to a Writ of Error filed in the Clerk's office of the District Court for the Southern District of Florida, wherein Louis Athanasaw and Mitchell Sampson are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 24th day of Feb'y A. D., 1912.

[Seal of the District Court of the United States for the Southern District of Florida.]

JAMES W. LOCKE,
*District Judge of the United States for
the Southern District of Florida.*

Attest:

E. O. LOCKE, *Clerk.*

By W. R. WATKINS,

*Deputy Clerk of the District Court for
the Southern District of Florida.*

Which said citation was duly filed on the 24th day of February, A. D., 1912.

On the same date, the Honorable J. M. Cheney, United States District Attorney for the Southern District of Florida, endorsed on said citation the following: "Service accepted, and further notice and service waived. This February 24th, 1912. J. M. Cheney, United States District Attorney for Southern District of Florida.

And thereupon the said defendants did each respectively enter into a supercedeas bond, which was duly approved by the court, in words and figures following:

32 In the District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA

v.

LOUIS ATHANASAW and MITCHELL SAMPSON.

We, Mitchell Sampson, and J. A. Griffin, and S. V. M. Ybor, jointly and severally acknowledge ourselves indebted to the United

States of America in the sum of Five thousand dollars, lawful money of the United States of America, to be levied on our and each of our goods and chattels, land and tenements upon this condition:

Whereas the said Mitchell Sampson has sued out a writ of error from the judgment of the District Court of the United States for the Southern District of Florida in the case in said court wherein the United States of America are plaintiff and the said Louis Athanasaw and Mitchell Sampson are defendants, for a review of the said Judgment in the Supreme Court of the United States,

Now then if the said Mitchell Sampson shall appear and surrender himself in the District Court of the United States for the Southern District of Florida on and after the filing in said District Court of the mandate of the said Supreme Court of the United States, and from time to time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or entered therein in this case, and shall abide by and perform any judgment or order which may be rendered in the Supreme Court of the United States, and not depart from the said District Court without leave thereof, then this obligation shall be void, otherwise to remain in full force and virtue.

Witness our hands and seals, this 24th day of Feb'y A. D., 1912.

MITCHELL SAMPSON.	[SEAL.]
J. A. GRIFFIN.	[SEAL.]
S. V. M. YBOR.	[SEAL.]

33 Approved as to form and sufficiency.

JAMES W. LOCKE, *Judge.*

Febfuary 24, 1912.

Before me personally came J. A. Griffin, and S. V. M. Ybor, who each being sworn for himself says he is worth the sum of Five Thousand Dollars \$5000.00 over and above all debts and homestead exemptions.

J. A. GRIFFIN.
S. V. M. YBOR.

Sworn to and subscribed before me, this 24th day of February, A. D. 1912.

[Seal of District Court of the United States for Southern District of Florida.]

E. O. LOCKE, *Clerk,*
By W. R. WATKINS,
Deputy Clerk.

In the District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA

v.

LOUIS ATHANASAW and MITCHELL SAMPSON.

We, Louis Athanasaw, and J. A. Griffin and S. V. M. Ybor, jointly and severally acknowledge ourselves indebted to the United States of America in the sum of Five thousand dollars, lawful money of the United States of America, to be levied on our and each of our goods and chattels, lands and tenements upon this condition:

Whereas the said Louis Athanasaw has sued out a writ of error from the judgment of the District Court of the United States for the Southern District of Florida in the case in said court wherein the United States of America are plaintiff and the said Louis Athanasaw and Mitchell Sampson are defendants, for a review of the
34 said Judgment in the Supreme Court of the United States,

Now then if the said Louis Athanasaw shall appear and surrender himself in the District Court of the United States for the Southern District of Florida on and after the filing in said District Court of the mandate of the said Supreme Court of the United States, and from time to time thereafter as he may be required to answer any further proceedings, and abide by and perform any judgment or order which may be had or entered therein in this case, and shall abide by and perform any judgment or order which may be rendered in the Supreme Court of the United States, and not depart from the said District Court without leave thereof, then this obligation shall be void, otherwise to remain in full force and virtue.

Witness our hands and seals, this 24th day of Feb'y A. D., 1912.

L. ATHANASAW. [SEAL.]

J. A. GRIFFIN. [SEAL.]

S. V. M. YBOR. [SEAL.]

Approved as to form and sufficiency.

JAMES W. LOCKE, *Judge.*

February 24th, 1912.

Before me personally came J. A. Griffin and S. V. M. Ybor, who each being sworn for himself says he is worth the sum of five thousand dollars \$5000.00 over and above all debts and homestead exemptions.

J. A. GRIFFIN.

SALVADOR V. MARTINEZ YBOR.

Sworn to and subscribed before me this 24th day of February, A. D., 1912.

[Seal of Clerk of District Court of Southern District of Florida.]

E. O. LOCKE, *Clerk,*

By W. R. WATKINS,

Deputy Clerk.

35 In the District Court of the United States for the Southern District of Florida.

Be it remembered that at a Term of the District Court of the United States, for the Southern District of Florida, held at Tampa, in said District, on the 21 day of February, A. D., 1912, the Cause therein pending wherein the United States was plaintiff and Louis Athanasow and Mitchell Sampson are defendants, came on to be heard before the Honorable James W. Locke, Judge of said Court, at which date came the said defendants in person, and the attorneys for the respective parties; and

Thereupon the issues in manner aforesaid joined between the said parties came on to be tried before a jury duly sworn to try said issues in manner aforesaid joined; and

Thereupon, the following proceedings were had:

The Government, to maintain its case produced and swore as a witness one AGNES COUCH, who testified in substance as follows, to-wit:

I am seventeen (17) years of age, and live at Suwanee, Georgia. In September, 1911, I was in Atlanta, Georgia, and seeing an advertisement of one Sam Massell wanting ten (10) chorus girls I answered the advertisement, and saw said Massell in his office in Atlanta, Georgia, and in the office of the said Sam Massell I signed the contract hereto attached, marked Exhibit 1 and was shown the letterhead attached thereto. After I signed the contract Massell gave me a ticket from Atlanta, Georgia, over the Southern and Seaboard railways to Tampa, Florida, and I came with my trunk from Atlanta, Georgia, to Tampa, Florida, over the railways above
36 mentioned. I arrived in Tampa, Florida, on the seventh of September, 1911, at about six-thirty o'clock, and I went to the Imperial Theater and there met Mr. Louis Athanasow, one of the defendants, at seven o'clock. He showed me my room, and took the check to get my trunk. I went to sleep and slept until two o'clock in the afternoon. At that hour one of the girls awoke me up to rehearse. I went down in the Theater and stayed there about an hour rehearsing, singing; and then went to lunch in the dining room. All of the girls were there, and several boys. I had never had any stage experience. At lunch they were all smoking, cursing and using such language I couldn't eat. After lunch I went to my room, and about six o'clock Louis Athanasow, one of the defendants, came and said to me I would like it all right; that I was good looking and would make a hit, and not to let any of the boys fool me, and not be any of the boys' girl; to be his. He wanted me to be his girl; to talk to the boys and make a hit, and get all of the money I could out of them. His room was next to mine, and he told me he was coming in my room that night and sleep with me; and he kissed and caressed me. He told me to dress for the show that night and come down into the boxes. I went into the box about nine o'clock. About that time Louis Athanasow's son knocked on my

door and told me to come to the boxes. In the box where I went there were four boys; they were smoking, cursing and drinking. I sat down and the boys asked me what was the matter, I looked scared. I told them I was ashamed of being in a place like that; and Arthur Schlemann, one of the boys, said he would take me out. The others insisted on my staying, and said I would like it when I got broke in. I tried to go out with Schlemann, but a boy named Gilbert pulled me back, saying "let that cheap guy alone." Schlemann said he would send a policeman, and in about fifteen

37 minutes Mr. Thompson and Mr. Evans came in for me. Mr. Louis Athanasow asked what the trouble was; why I would not stay until morning when he would send me away if I spent the night; he said I could not go that night; and he said I could not have my trunk, he had held it for transportation. I went away with Mr. Thompson and Mr. Evans. The boxes in that Theater were looking over the stage; with a little opening looking onto the stage. There was a door in the back of it that could be closed and bolted. They were on the second floor. There were some chairs and a table in it.

She further stated that the day she signed the contract with Massell, was the first time she had ever seen him.

She further stated that on the preliminary examination of her cause she testified that Louis Athanasow caressed, and hugged and kissed her; but that she did not then state that he proposed to sleep with her or make her his girl.

She did not know any of the boys in the box; that while in there they forced her to drink a bottle of beer, and insisted on her smoking.

She further stated that she had never drank beer before.

The Goveernment also introduced as a witness one ARTHUR SCHLEMAN, JR., who testified in substance:—

That he knew Louis Athanasow and Mitchell Sampson; that he knew they ran the Imperial Theater; that he saw Agnes Couch at the Theater in the boxes one Saturday night, between ten and eleven o'clock; that Louis Athanasow's son brought her to the box. That he had gone to see the show. That Louis Athanasow was behind the bar downstairs. In the box they got a couple of beers. That

38 Agnes Couch came in and I asked her, do you drink beer, and she said, yes, I drink beer at home; I asked her if she would have a bottle, and she said she thought so. The beer was brought. The girl, Agnes Couch, sat there awhile, and in talking to her I thought she was a decent girl. The boys were touching her and fooling with her. I thought she was decent because it took her so long to drink the beer. I took her out of the box and spoke to her. She said she wanted to get out. I went out to the street and told Mr. Evans and Mr. Thompson there was a girl up there wanted to get out. They said they wanted to go to a train. I then went and tried to take Agnes Couch out. At the foot of the steps we met a Mr. Gilbert, and about twenty (20) men; I think they were fishermen; and Mr. Gilbert asked me what right I had; and I said none of your

business, and he said he would make it his business. And then the fishermen came around taking their coats off to fight me, and Gilbert takes the girl upstairs; and then Mr. Evans and Mr. Thompson got her out. She said she was afraid to ask Mr. Athanasow to let her go; and I was afraid to ask him myself.

And then the Government introduced and caused to be sworn, L. W. EVANS, who testified in substance as follows:—

I am a constable. I saw this girl, Agnes Couch, in Louis Athanasow's Theater. We went up there to see her because Schlemann reported there was a girl therewho appeared to be a nice girl and wanted to leave, and that the management would not allow her to leave. When we got up there I found the girl crying. She was in one of the Theater boxes. We asked her what was the matter and she said she wanted to leave; that it was not the kind of place she thought she was coming to; that she had been booked in Atlanta to come to Tampa as a chorus girl, and after she got here it was not what she thought it was; she wanted to leave; that she was not used to anything of that kind. While we were talking Mr. Athanasow came up and said to the girl that he did not know she wanted to leave; that if she had told him he would have seen about it. She wanted to get her trunk, and Mr. Athanasow asked us what he was going to do about his transportation; and he said he was going to hold the trunk. We then took the girl out and left the trunk. The boxes in this theater up stairs are partitioned off, and have a window in each one of them. They are small rooms with a window in each one of them, looking on the stage. There is a hall all around on the outside. There is a door in the back of the boxes leading to the hall.

And thereupon the Government introduced and caused to be sworn as a witness, A. S. THOMPSON, who testified in substance as follows:

A complaint came to me by Arthur Schlemann about a girl at Athanasow's place, and I went there and talked with her. She said she had come to work, was dissatisfied with the place and wanted to leave; that she had started to go and they would not let her. I took her in a buggy and carried her to Mrs. Davis'. Mr. Athanasow came while I was talking to the girl and said, leave her until morning and I will send her home. I told him, no, I was going to take her then; and he said, what about her transportation, she owes me for that. I told Him I did not know; that we were going to take the girl, and we took her and left the trunk.

And thereupon the Government introduced and caused to be sworn as a witness one SAM MASSELL who testified in substance as follows:—

I live in Atlanta, Georgia, and lived there in September, 1911. I had some correspondence with Louis Athanasow and Mitchell Sampson, the defendants, with reference to actresses for their theater, which letters and telegrams are hereto attached, marked Exhibits 2, 3, 4, & 5. The contract attached to Agnes Couch's testimony was

signed in my office. I furnished this girl with the ticket on which she came to Tampa. My business was a theatrical booking agency. I worked for in the neighborhood of fifty theaters throughout the United States. My contract with Athanasow & Sampson was similar to those I had with other places.

The defense then introduced C. M. DICKENSON, as a witness, who testified in substance as follows:—

That he was the Traffic Passenger Agent of the Seaboard Air Line Railway in September, 1911; and at the request of Athanasow & Sampson he had arranged for tickets to be furnished for Agnes Couch and other persons from Atlanta, Georgia, to Tampa, Florida; and also furnished other tickets; that he did the same thing for other theaters in Tampa.

The defense then introduced H. L. CRANE, as a witness, who testified in substance:

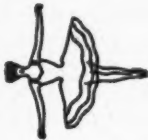
That he was the United States Court Commissioner who held the preliminary examination in this case; that Agnes Couch testified at the hearing, and at the said hearing the ordinary oath delivered to a witness was delivered to her. That she did not at that time state that Louis Athanasow either kissed or fondled her in any way;

(Here follows letterhead marked page 41.)

Imperial Theatre

.. ATHANASOW & SAMPSON ..

Sixth Avenue and Fifteenth Street



Tampa, Fla., 191

Exhibit Hall."

Read Carefully

This letter will answer the purpose of a contract so please read carefully before accepting an engagement.

All the ladies engaged in this Theatre are required to go in the boxes.

We have good, clean, airy rooms for the accomodation of our people. All performers engaged by this Theatre are to board and sleep in the house.

Performers must send in their billing matter, photos, etc., two weeks in advance.

Performers cancelling their engagements, without giving sufficient notice, need never write again.

42

Ex. B.

Sam Massell Theatrical Booking Agency,
Austel Bldg.

ATLANTA, GA., Sept. 6th, 1911.

Miss Agnes Couch you are hereby engaged to furnish your services professionally known as "Chorus Girl" to appear with the "Imperial Musical Comedy Company" at the Imperial Theatre, Tampa, Fla for an indefinite period opening not later than Monday, Sept. 11th, You are required to comply with the rules and regulations as set forth on the letter head of the Imperial Theatre which has been read carefully by you. In consideration for your services rendered you are to receive the sum of Twenty Dollars (\$20.00) weekly for the first four weeks and Fifteen Dollars (\$15.00) every weeks thereafter. There is also an amount of 20% allowed you on all drinks sold in the boxes. A sum equal to one half of your first week's salary is to be deducted by the Manager and remitted to Sam Massell who is acting as Booking Representative for both parties.

Messrs. ATHANASOW AND SAMPSON, M'g'rs.

SAM MASSELL, *Booking Representative.*

SAM MASSELL.

Miss AGNES COUCH. [SEAL.]

43

EXHIBIT 2.

Imperial Theatre.

TAMPA, FLA., Aug. 28th, 1911.

Mr. Sam Massell, 317 Austell Building, Atlanta, Ga.

DEAR SIR: Your letter of July 20th ulto. received but owing to big business I was unable to answer at once.

I would like to do business with you if you can get me girls under such circumstances. Salary \$20.00 per week for first 4 weeks \$15.00 in stock. and I can change people every 6 or 8 weeks. Percentage on drinks is 20 per cent on dollar. and people must room and board in Theatre.

I also send tickets to girls in your care. Let girls have some costumes and do specialty.

Your commission is always sent you through me.

If you can send me 6 girls please wire me at once and I will send tickets.

Yours truly,

ATHANASOW & SAMPSON.

44

EXHIBIT 3.

Aug. 31st, 1911.

Messrs. Athanasow and Sampston, Imperial Theatre, Tampa, Fla.

GENTLEMEN: Your favor of the 28th received and contents noted with care. I just sent you a telegram asking you to wire the tickets and that I would have the girls there before Monday, Sept. 11th. If possible, of course, I will ship them all at once, however, I mentioned the date Sept. 11th merely as a limit of time that I would like to have in which to fill.

If the tickets get here at once, I will possibly send a few of the girls down immediately and the balance of them will follow.

I would be glad to send these girls down on the terms set forth in your letter for a period of not less than eight weeks and would also be glad to effect an arrangement with you whereby I could supply you with Six New faces at the expiration of every eight weeks.

I confirm herewith the terms of the contract on which I will supply them viz:

Salary for the first four weeks \$20.00.

Salary for the second " weeks 15.00 Making 8 weeks.

You to furnish costumes and to ad-ance transportation.

I trust to be favored with your patronage.

Very truly yours,

45

EXHIBIT 4.

The Western Union Telegraph Company.

AUGUST 31st, 1911.

Messrs. Athanasow, Sampson Co., Imperial Treatre, Tampa, Fla.:

Wire six tickets now and will fill before September eleventh. answer.

SAM MESSELL.

Collect.

46

EXHIBIT 5.

SEPT. 7TH, 1911.

Messrs. Athanasow, Sampson Co., Imperial Treatre, Tampa, Fla.

GENTLEMEN: I enclose herewith another contracts with "Miss Agnes Couch" a young girl of good appearance but one of no experience in Chorus Work. She will make a good girl for the Wine Room and she will learn the Chorus work quickly.

The next set of girls which I will send you will be all experienced and I will send only selected ones as I will have plenty of time in which to supply.

With very best wishes, I am,

Very truly yours,

47 neither did she state that Louis Athanasow proposed to have sexual intercourse with her or that Louis Athanasow proposed to sleep with her.

In cross examination he testified that the girl answered all questions that were propounded to her, and only answered questions.

The defense then introduced E. M. MACBRYDE, as a witness, who testified in substance that—

He was a newspaper reporter; that he attended the preliminary hearing in this case, and that he heard Agnes Couch testify; that at said hearing she did not testify that Louis Athanasow either hugged, kissed or fondled her; neither did she testify that Louis Athanasow proposed to have her for his girl or to spend a night with her. That at that hearing Agnes Couch was asked to state all that occurred at the Imperial Theater while she was there.

The defense then introduced as a witness the defendant, LOUIS ATHANASOW, who testified in substance:—

That the defendant, Mitchell Sampson, was his brother-in-law, and that he was a married man and lived with his wife; and had children. That he lived some distance from the Imperial Theater, and was living there at the time Agnes Couch came to the Theater. That he had a room at the Theater at the time Agnes Couch came there. That he had been running this Theater for three years. That it was a regular Theater where they dance, sing, and do tricks. That the actresses who performed lived in the Theater, the women living on one side, which had no connection with the other;

48 that in the part where the women lived no men lived, and no men were allowed in that part of the building. That the way Agnes Couch came to come to Tampa, Massell had agreed to book his Theater, and he sent tickets at Massell's request to Atlanta for the actress to come. That on the day that Agnes Couch reached Tampa he was at home, and received a telephone message that a lady wanted to see him; that he went there and the following conversation occurred: She said I want to see the boss; I says I am the boss; she said, I book with this theater from Atlanta for four weeks at twenty dollars a week; I said, what time do you want to go to work; she said, Monday, the eleventh. I asked her if she was going to stay there until Monday, or stay somewhere else; and she said, your contract was for all of the performers to stay in the house, and that she would like to see her room as she had been on the road all night; so, I went upstairs and asked the housekeeper if the room was ready; and she said the corner room was; so, I told Agnes Couch to go in there. From that time I never saw her until Mr. Thompson, the policeman, came for her. I asked Mr. Thompson what was the matter, and he said, I got a complaint to make; I am going to take this lady from here; I told him all right, and he took her away. I never saw her any more. The next morning she sent for her trunk and it was sent to her. I never made any improper proposals to Miss Couch, nor fondled her in any way. I never saw her before the morning I met her at the Theater. The rules for my Theater,

established and enforced, are not to allow men to visit the women in the building. The rules are printed on the letter head attached to the contract signed by Agnes Couch. The women's part of the house was run by a woman, Miss Ray Lewis, she was the housekeeper. I am fifty years old.

49 Then the defendant introduced as a witness, MITCHELL SAMPSON, who testified in substance:—

That he was Louis Athanasow's partner in the Imperial Theater; that he was not in Tampa at the time that Agnes Couch came there nor at the time she left. I went away from Tampa on the ninth to visit a friend of mine, and never saw Agnes Couch. The letters attached to Massell's testimony from us were written by me. I only intended Massell to send actresses here to perform in the theater.

The defendants then introduced as a witness, RAY LEWIS, who in substance testified:

That she was the housekeeper at the Imperial Theater at the time Agnes Couch was there; that no men were allowed to visit the rooms where the women performing in the theater slept or lived; that the rooms were entirely under her supervision; that she never saw any men in those rooms at all.

And thereupon the testimony was closed.

First Exception.

And thereupon, the Court was requested by the defendants to charge as follows:—

50 The Court instructs the jury that before they can find the defendants or either of them guilty under the indictment in this cause it must be satisfied beyond a reasonable doubt from the evidence that the defendants, or one of them, procured, or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida, and at the time of the procuring or aiding in the procuring of said transportation the defendants, or one of them, had the intent at that time, either themselves to debauch the said Agnes Couch, or to procure her debauchment by some other person or that they intended to induce, entice, or compel the said Agnes Couch to give herself up to debauchery.

Which the Court did then and there refuse to do, to which ruling the defendants excepted.

Exception No. 2.

And the said defendants further requested the Court to charge as follows:—

The Court further instructs you that the word "debauchery", as used in the act of Congress under which the defendants are indicted, and in the indictment in this case, means sexual intercourse between a man and a woman.

Which the said Court then and there refused to do, to which ruling the defendants excepted.

Exception No. 3.

Defendants then and there requested the court to charge the jury as follows:

If the jury have a reasonable doubt from all the evidence in this cause that the defendants did not intend at the time of the procuring of the transportation to either themselves debauch the said
 51 Agnes Couch, or procure her debauchment by some other person, or to induce, entice, or compel the said Agnes Couch to give herself up to debauchery, then the jury must acquit the defendants.

Which the said Court refused to do, to which ruling the defendants then and there excepted.

Fourth Exception.

The said Court, of its own motion did then and there charge the jury as follows, to-wit:—

The Court instructs you that before you can find the defendants or either of them guilty under the indictment in this case, you must be satisfied beyond a reasonable doubt from the evidence that the defendants, or one of them, procured, or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida, and at the time of the procuring or aiding in the procuring of said transportation the defendants both or one of them had the intent at the time to employ said Agnes Couch in a position and put her under conditions which would induce or incite her to be lead into a condition of debauchery that would tend to immoral sexual intercourse.

To the giving of which said charge the defendants then and there excepted.

Fifth Exception.

And the said Court of its own motion did charge the jury as follows, to-wit:

Now, gentlemen, the Congress of the United States has provided that any person who shall transport or cause to be transported or aid or assist to obtain transportation in interstate commerce
 52 (which means from one state to another) of any woman or girl for the purpose of debauchery, shall be guilty of a felony, and upon conviction shall be punished in accordance with law. Unquestionably this Act, although it originated for the purpose of protecting these poor unfortunate women, who, by accident or otherwise had placed themselves under the control of unscrupulous persons, yet the language of the law is direct and positive in its terms and meaning, and should be construed to do everything that the United States Congress has a legal right to do and has used language with the intention to prevent and break up vice and immorality.

To the giving of which said charge the defendants then and there excepted.

Sixth Exception.

And the said Court did further charge the jury as follows, to-wit:—

It has been proven and admitted that Agnes Couch came to Tampa at the procurement of the defendants who furnished her transportation by furnishing tickets for that purpose. The only remaining question is whether Agnes Couch was brought here for the purpose of debauchery; that is the vital point in this case; and in determining it you will examine carefully all of the testimony in connection with the procuring of her coming. It is to a certain extent a case of circumstantial evidence; not positive and direct, but circumstantial, to be determined by all of the circumstances surrounding it; and you will examine in determining this question the position into which she was brought, the condition in which she found herself when she came, and the necessary result of such conditions; and determine from all of the testimony what was
 53 the purpose of bringing her here, whether or not it was to entice or induce her to give herself up to a life of debauchery.

To the giving of which said charge the defendants then and there excepted.

Seventh Exception.

And the said Court did further charge the jury of its own motion as follows:—

The intent and purpose of the defendants at the time of the furnishing of this transportation for Agnes Couch is the very gist and question of this case. Did they intend to induce or entice or influence her to give herself up to debauchery? It makes no difference whether the profits which would be made by the defendants came from the sale of liquor or other immoral purpose. The question here is of intent; what was the intent with which they brought her; that she should live an honest, moral and proper life? Or that she came and they engaged and contracted with her for the purpose of her entering upon a condition which might be termed debauchery, or tends to or would necessarily and naturally lead her to a condition of debauchery just referred to.

To the giving of which charge the defendant- then and there excepted.

Eighth Exception.

And the said Court did then and there, of its own motion, charge the jury as follows:—

The term debauchery is not a legal or technical term. There is no allegation that the defendants brought her here with the
 54 purpose or with the intent to debauch her; but to induce her or entice her, or influence her to enter upon a course of debauchery. To debauch is to corrupt in morals or principles; to lead astray morally into dishonest and vicious practices; to corrupt; to lead into unchastity; to debauch. Debauchery then, is an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence, taking up vicious habits. The term debauchery, as used

in this Statute, has an idea of sexual immorality; that is, it has the idea of a life which will lead eventually or tends to lead to sexual immorality; not necessarily drunkenness or immorality, but here it leads to the question in this case as to whether or not the influences in which this girl was surrounded by the employment which they called her to, did or did not tend to induce her to give herself up to a condition of debauchery which eventually, necessarily and naturally would lead to a course of immorality sexually. That is the question for you to determine, and it is a question that you alone can determine. You have heard the testimony in the case in regard to the circumstances in which she was placed. You have viewed the scene where she was employed. You have examined by the testimony and your observation what was the character and what was the condition or influences in which the girl was placed by the defendants. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature relating to sexual intercourse between man and woman.

To the giving of which charge the defendants then and there excepted.

Ninth Exception.

And the said Court did further charge the jury as follows:

55 Now, it is contended that they must have had a deliberate intent to debauch her when she came here; that either one or the other intended to debauch her or to get somebody else to debauch her. Now, that term debauch is used in a great many instances in law, and the usual connection is to have carnal intercourse with; but there is no such language in this Statute, nor is it the language of the indictment. The charge of the indictment in substance is that they *induced* or induced her to enter into a life or condition of debauchery; "to induce or compel her to give herself up to debauchery".

To the giving of which said charge the defendants then and there excepted.

And Inasmuch As the several exceptions so taken during the course of said trial did not appear of record, the defendant during the term of Court aforesaid made up and tendered to the Court the foregoing as defendants' bill of exceptions to the aforesaid rulings of the Court, and requested the Court to sign the same; and

Thereupon, upon due notice to the United States District Attorney, the said bill of exceptions so made up was settled by the Court as herein set forth, and it is hereby certified that the same contains the substance and effect of the evidence adduced at the trial of said cause, and truly represents the proceedings at the said trial, and the exceptions taken by the defendants; and the same is hereby signed and allowed as a bill of exceptions in the said cause, and made a part of the record herein.

56 Done and Ordered in Open Court, this the 2d day of March,
A. D., 1912.

JAMES W. LOCKE, *Judge.*

57 And in the said cause aforesaid the said Judge did charge the jury as follows, to-wit:

GENTLEMEN OF THE JURY: The Court instructs you that before you can find the defendants or either of them guilty under the indictment in this case, you must be satisfied beyond a reasonable doubt from the evidence that the defendants, or one of them, procured, or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida, and at the time of the procuring or aiding in the procuring of said transportation the defendants both or one of them, had the intent at the time to employ said Agnes Couch in a position and put her under conditions which would induce or incite her to be lead into a condition of debauchery that would tend to immoral sexual intercourse.

Now, Gentlemen, the Congress of the United States has provided that any person who shall transport or cause to be transported or aid or assist to obtain transportation in interstate commerce (which means from one state to another) of any woman or girl for the purpose of debauchery, shall be guilty of a felony, and upon conviction shall be punished in accordance with law. Unquestionably this Act, although it originated for the purpose of protecting these poor unfortunate women, who, by accident or otherwise had placed themselves under the control of unscrupulous persons, yet the language of the law is direct and positive in its terms and meaning, and should be construed to do everything that the United States Congress has a legal right to do and has used language with the intention to prevent and break up vice and immorality.

The indictment in this case, in numerous counts, charges the defendants with having transported or assisted in obtaining transportation for a certain girl, Agnes Couch, from Atlanta, Georgia, to Tampa, Florida, for the purpose of debauchery. The question which will be submitted to you is whether or not the United States has proven such to be the case beyond a reasonable doubt. The tes-

58 timony is before you and you are the sole judges of the facts of the case. If you find that the defendant, or defendants, or either of them, did transport or procure transportation for one Agnes Couch, from Atlanta, Georgia, to Tampa, Florida, for the purpose of debauchery, it will be your duty to return a verdict of guilty. Unless you are satisfied of this beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

In determining this question there will be but a few points necessary for you to consider:

It has been proven and admitted that Agnew Couch came to Tampa at the procurement of the defendants who furnished her transportation by furnishing tickets for that purpose. The only remaining question is whether Agnes Couch was brought here for the purpose of debauchery; that is the vital point in this case; and in determining it you will examine carefully all of the testimony in connection with the procuring of her coming. It is to a certain extent a case of circumstantial evidence; not positive and direct, but *circumstantia*, to be determined by all of the circumstances surrounding it, and you will examine in determining this question the

position into which she was brought, the condition in which she found herself when she came, and the necessary result of such conditions; and determine from all of the testimony what was the purpose of bringing her here, whether or not it was to entice or induce her to give herself up to a life of debauchery.

The intent and purpose of the defendants at the time of the furnishing of this transportation for Agnes Couch is the very gist and question of this case. Did they intend to induce or entice or influence her to give herself up to debauchery? It makes no difference whether the profits which would be made by the defendants came from the sale of liquor or other immoral purpose. The question here is of intent; what was the intent with which they brought her; that she should have an honest, moral and proper life? or that she came and they engaged and contracted with her for the purpose of her entering upon a condition which might be termed debauchery, or tends to or would necessarily and naturally lead her to a condition of debauchery just referred to.

59 The intent and purpose of every sane man is to be presumed from the results of his actions. It is impossible to enter into a man's mind and determine what were his thoughts or his intent, but he is presumed to know the results of the steps he takes. The question then for you to consider is what would be the result of the acts of the defendants in procuring this girl to be brought to this place for the purpose she was brought and placing her in the conditions, according to the testimony in regard to the conditions in which she was placed.

The term debauchery is not a legal or technical term. There is no allegation that the defendants brought her here with the purpose or with the intent to debauch her; but to induce her or entice her, or influence her to enter upon a course of debauchery. The term debauchery is not a legal or technical term. To debauch is to corrupt in morals or principles; to lead astray morally into dishonest and vicious practises; to corrupt; to lead into unchastity; to debauch. Debauchery then, is an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence, taking up vicious habits. The term debauchery as used in this Statute, has an idea of sexual immorality; that is, it has the idea of a life which will lead eventually or tends to lead to sexual immorality; not necessarily drunkenness or immorality, but here it leads to the question in this case as to whether or not the influences in which this girl was surrounded by the employment which they called her to, did or did not tend to induce her to give herself up to a condition of debauchery which eventually, necessarily and naturally would lead to a course of immorality sexually. That is the question for you to determine, and it is a question that you alone can determine. You have heard the testimony in the case in regard to the circumstances in which she was placed. You have viewed the scene where she was employed. You have examined by the testimony and your observation what was the character and what was the condition or influences in which the girl was placed by the defendants. Was or was

60 not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature relatint to sexual intercourse between man and woman.

I am not going to recall to your attention the testimony. It is before you; the conditions under which she was placed. I will leave it to you, Gentlemen of the Jury.

Now, they knew when they employed her and sent transportation for her just what they employed her for; they knew what they employed her to do. I am not going to refer to what the testimony is; but you know from the facts and circumstances and conditions, (and as I say, it is partially a circumstantial case), the conditions she was placed in by her employment; and that was the purpose for which they brought her here. Was that or not a life of debauchery which would reasonably or naturally lead to a violation of the moral law in regard to sexual intercourse. It is not necessary that they knew personally of her coming, and that before she came they had made up their minds that Agnes Couch was going to be induced or influenced or incited to lead that life, their intent must apply to any party they expected for whom transportation was sent, and for that employment, no matter whom she was.

Now, it is contended that they must have had a deliberate intent to debauch her when she came here; that either one or the other intended to debauch her or to get somebody else to debauch her. Now that term debauch is used in a great many instances in law, and the usual connecction is to have carnal intercourse with; but there is no such language in this Statute, nor is it the language of the indictment. The charge of the indictment in substance is that they induced or influenced her to enter into a life or condition of debauchery,—“to induce or compel her to give herself to debauchery.”

Gentlemen, it is unnecessary for me to instruct you further—that is the only point, the only question of law. The locality and the jurisdiction has been proven. The facts and circumstances are clearly and distinctly before you. The question for you to determine is did they of did they not intend and purpose to bring

61 her here to place her into a position which would necessarily and naturally lead to debauchery of a carnal nature.

Approved as correct.

JAMES W. LOCKE, *Judge*.

62 In the United States District Court, Southern District of Florida.

I, E. O. Locke, Clerk of the said court, hereby certify that the foregoing pages and part pages of typewriting numbered from one to sixty-one inclusive, is a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case of the United States of America v. Louis Athanasaw and Mitchell Sampson, lately adjudicated in said court, as the same remains on file, and of record in my office.

In witness whereof I have hereunto set my hand officially, and

affixed the seal of said court at Tampa, in said district, this 12th day of March A. D., 1912.

[Seal District Court of the United States, Southern District of Florida.]

E. O. LOCKE, *Clerk.*

63 THE UNITED STATES OF AMERICA:

The President of the United States of America to the Judge of the District Court of the United States for the Southern District of Florida, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in said District Court before you between the United States of America, plaintiff, and Louis Athanasaw and Mitchell Sampson, defendants, manifest error hath happened to the great damage of the said Louis Athanasaw and Mitchell Sampson, as by their complaint appears; we being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, on the 25th day of March next, in the Supreme Court to be then and there held, that the record and proceedings held aforesaid being then inspected the said Supreme Court may cause further to be done to correct that error, what of right, according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, on the 24 day of February A. D., 1912.

[Seal District Court of the United States, Southern District of Florida.]

E. O. LOCKE,

Clerk of the District Court of the United States for Southern District of Florida,

By W. R. WATKINS,

Deputy Clerk.

Allowed by

JAMES W. LOCKE,

District Judge of the Southern District of Florida.

64 [Endorsed:] In the District Court of the United States, Southern District of Florida. The United States of America v. Louis Athanasaw and Mitchell Sampson. Writ of Error. Filed this 24th day of Feb'y, A. D. 1912. E. O. Locke, Clerk. W. R. Watkins, Dep. Clerk.

This Writ of Error is executed by transmitting herewith to the Supreme Court of the United States herewith a full, true and correct transcript of the Record, Assignment of Errors and Bill of Exceptions and all proceedings in this case, certified under my hand and Seal of said Court this March 12, 1912.

E. O. LOCKE,

Clerk U. S. District Court, So. Dist. Fla.

65 THE UNITED STATES OF AMERICA:

The President of the United States to the United States of America, and John M. Cheeney, District Attorney of the United States for the Southern District of Florida, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held in the City of Washington within thirty days from the date of this writ, pursuant to a Writ of Error filed in the Clerk's office of the District Court for the Southern District of Florida, wherein Louis Athanasaw and Mitchell Sampson are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States of America, this 24th day of Feb'y A. D., 1912.

JAMES W. LOCKE,

*District Judge of the United States
for the Southern District of Florida.*

[Seal District Court of the United States, Southern District
of Florida.]

Attest:

E. O. LOCKE, *Clerk,*

By W. R. WATKINS,

*Deputy Clerk of the District Court for
Southern District of Florida.*

Service accepted and all further notice and service waived. This February 24th, 1912.

J. M. CHENEY,

*U. S. District Attorney for Southern
District of Florida.*

66 [Endorsed:] In the District Court of the United States for the Southern District of Florida. The United States of America v. Louis Athanasaw and Mitchell Sampson. Citation. Filed this 24th day of Feby, A. D. 1912. E. O. Locke, Clerk, by W. R. Watkins, Deputy Clerk.

Endorsed on cover: File No. 23,108. S. Florida D. C. U. S. Term No. 588. Louis Athanasaw and Mitchell Sampson, plaintiffs in error, vs. The United States. Filed March 21st, 1912. File No. 23,108.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

LOUIS ATHANASAW AND MITCHELL SAMP-	} No. 588.
son, plaintiffs in error,	
v.	
THE UNITED STATES.	

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA.*

MOTION TO ADVANCE.

The Solicitor General, on behalf of the United States, moves the court to advance this case for hearing during the present term with Nos. 381, 602, and 603, in which cases like motions are submitted.

All are criminal cases, arising under the act of Congress, approved June 25, 1910, 36 Stat. 825, known as the White Slave Traffic Act, and involve the constitutionality of that act.

In this case plaintiffs in error were convicted of violating the statute by causing a young girl to go from Atlanta, Ga., to Tampa, Fla., in interstate commerce, for the purpose of prostitution. Athanasaw was sentenced to a term of two years and six months and Mitchell to a term of one year and three months in the penitentiary.

The trial court overruled a demurrer to the indictment and a motion in arrest of judgment which challenged the constitutionality of the act. Such rulings and the refusal of the court to submit certain charges to the jury are assigned as error in this court.

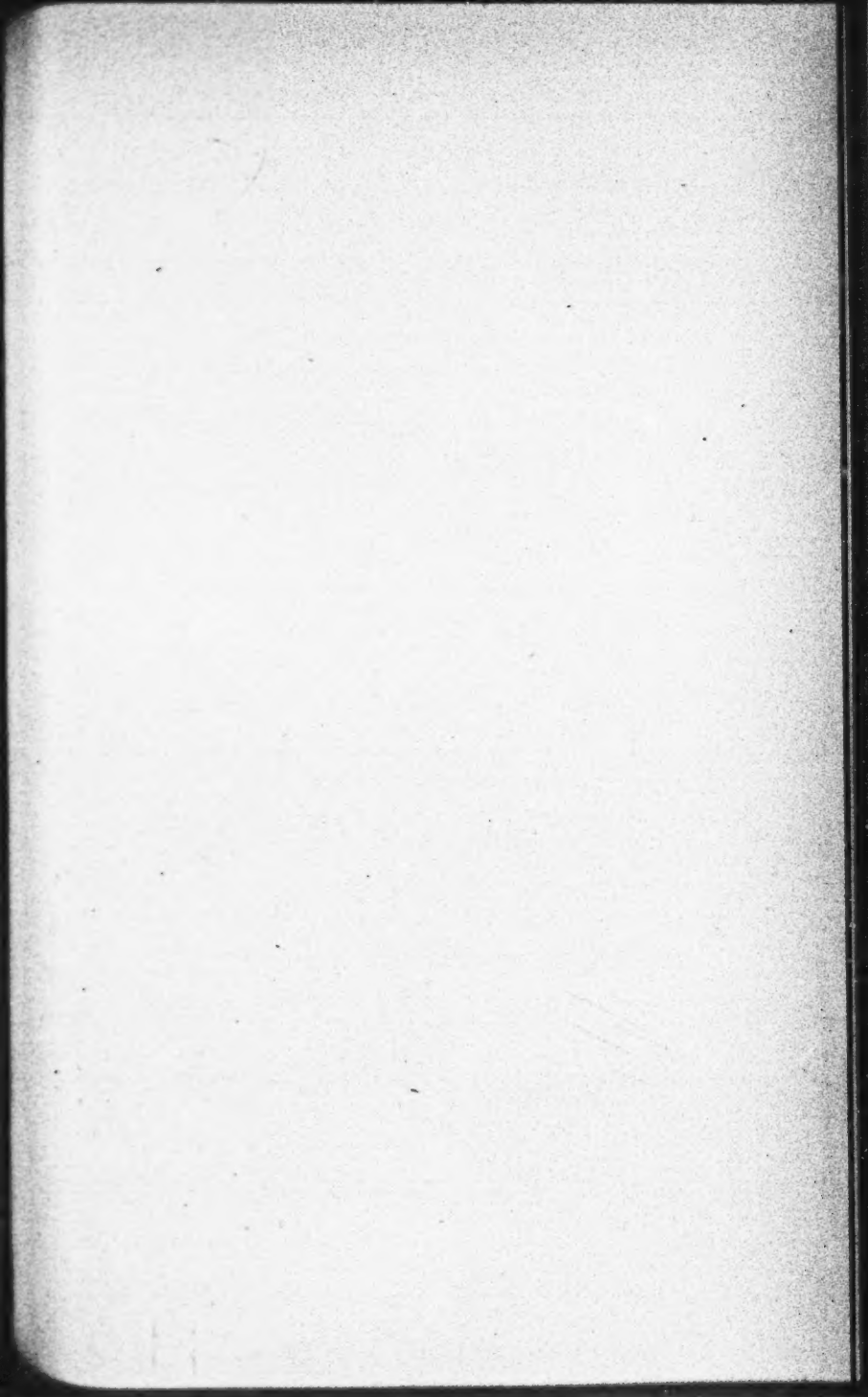
Notice has been given of this motion.

WILLIAM MARSHALL BULLITT,
Solicitor General.

WILLIAM R. HARR,
Assistant Attorney General.

OCTOBER 15, 1912.





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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 588.

LOUIS ATHANASAW AND MITCHELL SAMPSON,
PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES, DEFENDANT IN ERROR.

WRIT OF ERROR TO THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF OF PLAINTIFFS IN ERROR.

Statement.

At a term of the Circuit Court of the United States for the Southern District of Florida, on the 16th day of December, 1911, the plaintiffs in error, Louis Athanasaw and Mitchell Sampson, hereinafter called defendants, were indicted for a violation of the act of Congress of June 25, 1910, commonly called "The White Slave Act," in that they had transported, or caused to be transported, or aided in the

transportation of a girl by the name of Agnes Couch from Atlanta, Georgia, to Tampa, Florida, for the purpose of debauchery.

The indictment, which will be found in the record on pages one to eleven, contains thirty-nine counts, the several counts charging a violation of the second and third sections of the act of Congress above mentioned in different ways, each count, however, charging that the unlawful purpose for which the girl was transported was debauchery; no count in the indictment charging either that the girl was transported for the purpose of prostitution or for any other immoral purpose.

On the 20th day of February, 1912, the defendants filed a demurrer to the indictment and each count thereof, which demurrer will be found on page 12 of the record, upon the following grounds:

A. The act of Congress under which the said indictment is found is unconstitutional and void.

First. For the reason that there is no grant of power by the Constitution to Congress to legislate upon the subject.

Second. Because the said act of Congress in no way directly affects any subject-matter over which Congress has jurisdiction.

Third. Because the act sought to be punished by the act of Congress is one wholly within the police power of the several States.

B. Said indictment fails to state the persons sought to be debauched.

C. The said indictment fails to allege that the purpose of debauchery existed in the minds of the defendants.

D. The said indictment fails to allege that the purpose of debauchery existed in the minds of the defendants at any time prior to or during the transportation of the woman.

E. Said indictment is bad for the reason that there is no allegation that the woman was actually transported in interstate commerce.

Which demurrer was overruled by the court (see Record, page 12).

And thereupon a trial was had upon pleas of not guilty, and verdict of guilty rendered against both of the defendants, and judgment entered (see Record, page 13).

Afterwards, on the 24th of February, 1912, a motion in arrest of judgment was filed by the defendants, in words following:

1. The act of Congress under which the indictment in this case is found is unconstitutional.
2. The act of Congress under which the indictment is found is not within the powers delegated to Congress by the Constitution of the United States.
3. Because each count of the indictment is bad in that it does not allege that the intent to debauch the said Agnes Couch, or to cause her to be debauched, or to compel, incite, or coerce her to give herself up to debauchery is alleged in said indictment to have existed in the minds of either of the defendants at the time of the inception or during the transportation of the said Agnes Couch.

This motion is found in the record, pages 13 and 14; which motion was overruled by the court (see Record, page 14).

From the judgment of conviction thus rendered the defendants sued out a writ of error to this court, and filed the following assignment of errors, which said assignment of errors will be found in the record, on pages 15 to 17.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA.

THE UNITED STATES OF AMERICA

vs.

LOUIS ATHANASAW and MITCHELL SAMPSON.

Now come the defendants in the above-entitled cause and at the time of filing their petition for a writ of error to the Supreme Court of the United States, and assign the following errors, to-wit:

1. The court erred in overruling the demurrer of the defendants to the indictment, and to each count thereof.
2. The court erred in holding that the act under which the defendants were prosecuted, being an act of Congress commonly called the "White Slave Act," was constitutional.
3. The court erred in denying the defendants' motion for a new trial.
4. The court erred in denying the defendants' motion in arrest of judgment.
5. The court erred in refusing to charge the jury, as requested by the defendants, as follows, to-wit:
"The court instructs the jury that before they can find the defendants or either of them guilty under the indictment in this cause it must be satisfied beyond a reasonable doubt from the evidence that the defendants, or one of them, procured, or aided in the procuring, of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida, and that at the time of the procuring or aiding in the procuring of said transportation the defendants, or one of them, had the intent at that time either themselves to debauch the said Agnes Couch, or to procure her debauchment by some other

person, or that they intended to induce, entice, or compel the said Agnes Couch to give herself up to debauchery."

6. The court erred in refusing to charge the jury, as requested by the defendants, as follows, to-wit:

"The court further instructs you that the word "Debauch," as used in the act of Congress under which the defendants are indicted, and in the indictment in this case, means sexual intercourse between a man and a woman."

7. The court erred in refusing to charge the jury, as requested by the defendants, as follows, to-wit:

"If the jury have a reasonable doubt from all the evidence in this cause that the defendants did not intend at the time of the procuring of the transportation to either themselves debauch the said Agnes Couch, or procure her debauchment by some other person, or to induce, entice, or compel the said Agnes Couch to give herself up to debauchery, then the jury must acquit the defendants."

8. The court erred in charging the jury as follows, to-wit:

"The court instructs you that before you can find the defendants or either of them guilty under the indictment in this case, you must be satisfied beyond a reasonable doubt from the evidence that the defendants, or one of them, procured, or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida, and at the time of the procuring or aiding in the procuring of said transportation the defendants, both or one of them had the intent at the time to employ said Agnes Couch in a position and put her under conditions which would induce or incite her to be led into a condition of debauchery that would tend to immoral sexual intercourse."

9. The court erred in charging the jury as follows, to-wit:

"Now, gentlemen, the Congress of the United States has provided that any person who shall transport or cause to be

transported or aid or assist to obtain transportation in interstate commerce (which means from one State to another) of any woman or girl for the purpose of debauchery, shall be guilty of a felony, and upon conviction shall be punished in accordance with law. Unquestionably this act although it originated for the purpose of protecting these poor unfortunate women, who by accident or otherwise had placed themselves under the control of unscrupulous persons, yet the language of the law is direct and positive in its terms and meaning, and should be construed to do everything that the United States Congress has a legal right to do and has used language with the intention to prevent and break up vice and immorality."

10. The court erred in charging the jury as follows:

"It has been proven and admitted that Agnes Couch came to Tampa at the procurement of the defendants who furnished her transportation by furnishing tickets for that purpose. The only remaining question is whether Agnes Couch was brought here for the purpose of debauchery; that is the vital point in this case; and in determining it you will examine carefully all of the testimony in connection with the procuring of her coming. It is to a certain extent a case of circumstantial evidence; and not positive and direct, but circumstantial, to be determined by all of the circumstances surrounding it. And you will examine in determining this question the position into which she was brought, the condition in which she found herself when she came, and the necessary result of such conditions; and determine from all of the testimony what was the purpose of bringing her here, whether or not it was to entice or induce her to give herself up to a life of debauchery."

11. The court erred in charging the jury as follows, to-wit:

"The intent and purpose of the defendants at the time of the furnishing of this transportation for Agnes Couch is

the very gist and question in this case. Did they intend to induce or entice or influence her to give herself up to debauchery? It makes no difference whether the profits which would be made by the defendants came from the sale of liquor or other immoral purpose. The question here is of intent; what was the intent with which they brought her, that she should live an honest, moral and proper life? or that she came and they engaged and contracted with her for the purpose of her entering upon a condition which might be termed debauchery or tends to or would necessarily and naturally lead her to a condition of debauchery just referred to."

12. The court erred in charging the jury as follows:

"The term debauchery is not a legal or technical term. There is no allegation that the defendants brought her here with the purpose or with the intent to debauch her; but to induce her or entice her, or influence her to enter upon a course of debauchery. The term debauchery is not a legal or technical term. To debauch is to corrupt in morals or principles; to lead astray morally into dishonest and vicious practices; to corrupt; to lead into unchastity; to debauch. Debauchery then is an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence, taking up vicious habits. The term debauchery, as used in this statute, has an idea of sexual immorality; that is, it has the idea of a life which will lead eventually or tends to lead to sexual immorality; not necessarily drunkenness or immorality, but here it leads to the question in this case as to whether or not the influences in which this girl was surrounded by the employment which they called her to did or did not tend to induce her to give herself up to a condition of debauchery which eventually, necessarily, and naturally would lead to a course of immorality sexually. That is the question for you to determine, and it is a question that you alone can determine. You have heard the testimony in the case in regard to the circum-

stances in which she was placed. You have viewed the scene where she was employed. You have examined by the testimony and your observation what was the character and what was the condition or influence in which the girl was placed by the defendants. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature relating to sexual intercourse between man and woman?"

13. The court erred in charging the jury as follows, to wit:

"Now, it is contended that they must have had a deliberate intent to debauch her when she came here; that either one or the other intended to debauch her or to get somebody else to debauch her. Now, that term debauch is used in a great many instances in law, and the usual connection is to have carnal intercourse with; but there is no such language in this statute, nor is it the language of the indictment. The charge of the indictment in substance is that they induced or influenced her to enter into a life or condition of debauchery—'to induce or compel her to give herself up to debauchery.'"

W. A. CARTER,
WALL & MCKAY,
Attorneys for the Defendants.

(See Record, pages 15 to 17.)

Writ of error was duly issued (see Record, page 19) and a citation was duly issued and served (see Record, page 20).

A brief statement of the testimony is as follows:

Statement of the Testimony.

The testimony introduced by the Government was substantially as follows:

The girl, AGNES COUCH, whom the indictment alleged was transported by assistance rendered by the defendants, testified that she was seventeen years of age, and resided in Suwanee, Georgia. In September, 1911, she was in Atlanta, and noticing an advertisement issued by one Sam Massell wanting ten chorus girls she answered the advertisement and saw Massell in his office in Atlanta, Georgia. She signed a contract in said office, which she read and which was practically in these terms, or practically in the terms shown by Exhibit "A" attached to the testimony. This letter-head stated substantially that all ladies engaged at the theater run by Athanasaw and Sampson would be required to go in the boxes; that rehearsals would be held on certain days, and performers were expected to do two turns and work in acts when required. Drunkenness, fighting, or indecency would meet with prompt dismissal and loss of salary. And it was further provided that if any act was deemed by the manager not suitable it should be cut out. She further testified that Massell, after she had signed the contract, gave her a ticket from Atlanta, Georgia, to Tampa, Florida, over the Southern and Seaboard Air Line Railways; that she came from Atlanta to Tampa over said railroads, arriving in Tampa on the 7th of September at 6.30 a. m., and she then went to the Imperial Theater and there met Louis Athanasaw, one of the defendants, at about seven o'clock. She was shown to her room, and he took her check to get her trunk. She slept until two o'clock in the afternoon, at which hour she was awakened by one of the girls to rehearse. She went down to the theater and stayed there about an hour, rehearsing, singing, etc. She then went to lunch in the dining-room. All of the girls were in

the dining-room, and several boys. She had had no stage experience. At lunch they were all smoking and using language such that she could not eat. After lunch she went to her room, and at six o'clock Louis Athanasaw went to her room and told her she would like it all right; that she was good looking, and would make a hit; not to let any of the boys fool her and not to be any of their girl, but to be his girl. His room was next to hers, and he told her that he was coming in her room that night to sleep with her, and he kissed her and caressed her; told her to dress for the show that night and to come down into the boxes. She went down about nine o'clock (see Record, page 23). In the box where she went there were four boys. They were smoking, cursing, and drinking. She sat down, and the boys asked her what was the matter, as she looked scared. She told them she was ashamed of being in a place like that, and Arthur Schleman, one of the boys, said he would take her out. The others insisted on her staying. She tried to go out with Schleman, but another boy named Gilbert pulled her back, saying, "Let that cheap guy alone." Schleman said he would get a policeman. In about fifteen minutes Mr. Thompson and Evans came in for her. Mr. Louis Athanasaw, one of the defendants, asked what the trouble was; why she would not stay until morning, when he would send her away. He said that she could not go that night; that she could not have her trunk; that he held it for her transportation. She then went away with Mr. Thompson and Mr. Evans.

The boxes in the theater were looking over the stage; had openings on to the stage. There was a door to the back of them which could be locked and bolted. There were some chairs and tables in the boxes.

The day she signed the contract with Massell was the first time she had ever seen him. She further stated that on the preliminary examination of the defendants she testified that Athanasaw caressed, hugged, and kissed her, but

did not tell her that he proposed to sleep with her or make her his girl.

She did not know any of the boys in the box, and while in there they forced her to drink a bottle of beer and insisted upon her smoking. She had never drank beer before (see Record, page 24).

ARTHUR SCHLEMAN testified, in substance, for the Government, that he knew Athanasaw and Sampson; that they ran the Imperial Theater. He saw Agnes Couch at the theater one Saturday night between ten and eleven o'clock; that Louis Athanasaw's son brought her to the box. He had gone to see the show. In the box they got a couple of beers. Agnes Couch came in there, and he, Schleman, asked her, "Do you drink beer?" and she said, "Yes, I drink it at home." He asked her if she would have a bottle, and she said she thought so. The beer was brought, and the girl sat there awhile, and in talking to her he thought she was a decent girl. The boys were touching her and fooling with her. He thought she was decent, because it took her so long to drink the beer. He took her out of the box and spoke to her. She said she wanted to get out. He went out on the street and told Mr. Evans and Mr. Thompson there was a girl up there who wanted to get out. They said they wanted to go to a train. He then went back and tried to take Agnes Couch out. At the foot of the steps he met a Mr. Gilbert and twenty other men; thinks they were fishermen; and Gilbert asked what right he had, and Schleman told him it was none of his business, and he said he would make it his business, and the fishermen came around, taking their coats off to fight him (Schleman), and Gilbert took the girl back upstairs, and then Evans and Thompson got her out. She said she was afraid to ask Athanasaw to let her go (see Record, pages 24 and 25).

The Government then introduced L. W. EVANS, who testified in substance as follows:

That he was constable, and saw the girl at Athanasaw's theater. He saw her because Schleman says, "There is a girl in there who appears to be a nice girl, and wants to leave, and the manager would not let her leave." When he got there he found the girl crying. He asked what was the matter, and she said she wanted to leave; that it was not the kind of place she thought she was coming to; that she had been booked in Atlanta to come to Tampa as a chorus girl, and after she got there it was not what she thought it was and she wanted to leave. While they were talking the defendant Athanasaw came up and said to the girl that he did not know she wanted to leave; that if she had told him he would have seen about it. She wanted to get her trunk, and Athanasaw asked us what he was going to do about his transportation. He said he was going to hold the trunk. We took the girl out and left the trunk (see Record, page 25).

The Government then introduced A. S. THOMPSON as a witness, who testified as follows:

That he received a complaint from Arthur Schleman about a girl at Athanasaw's place, and went up and talked to her. She said she had come to work, and was dissatisfied with the place and wanted to leave, and she had started to go and they would not let her. He took her in a buggy and carried her to Mrs. Davis. Athanasaw came up while he was talking to the girl and said, "Leave her until morning, and I will send her home." Thompson told him no; that he was going to take her then. Athanasaw says, "What about the transportation? She owes for that." Thompson told him he did not know about that; that they were going to take the girl; and he took her and left the trunk (see Record, page 25).

The Government then introduced SAM MASSELL, who testified as follows:

That he lived in Atlanta, Georgia, and that he was living there in 1911; had some correspondence with Athanasaw and Sampson, the defendants, in reference to actresses for their theater; that Agnes Couch signed the contract in his office, and he furnished the girl with a ticket, on which she came to Tampa. His business was that of theatrical booking agent. He worked in the neighborhood of fifty theaters throughout the United States, and his contract with Athanasaw and Sampson was similar to others he had (see Record, pages 25 and 26).

The defendants then introduced C. M. DICKENSON, who, in substance, testified as follows:

That he was the traffic passenger agent of the Seaboard Air Line Railway in September, 1911, and at the request of Athanasaw and Sampson he arranged for tickets to be furnished for Agnes Couch and other persons from Atlanta, Georgia, to Tampa, Florida; and also furnished other tickets, and that he did the same thing for other theaters in Tampa.

The defendants then introduced as a witness H. L. CRANE, who testified in substance that he was the United States commissioner and held the preliminary examination in the case against the defendants, and that Agnes Couch was a witness at said examination; that she did not at that time state that Athanasaw either kissed or fondled her in any way; neither did she state that Athanasaw proposed to have sexual intercourse with her or that he proposed to sleep with her (see Record, page 26).

The defense then introduced E. M. MACBRYDE as a witness, who, in substance, testified as follows (see Record, page 29):

That he was a newspaper reporter; attended the preliminary hearing against the defendants; heard Agnes Couch

testify; that at said hearing she did not testify that Louis Athanasaw either hugged, kissed, or fondled her; neither did she testify that Louis Athanasaw proposed to have her for his girl, or to spend the night with her; and that at the hearing she was asked to tell all that occurred at the theater while she was there.

The defense then introduced LOUIS ATHANASAW, one of the defendants, who testified in substance that he and Mitchell Sampson, his brother-in-law, owned the Imperial Theater; that he was a married man, and lived with his wife, and had several children. He lived some distance from the theater, and was living there at the time Agnes Couch came to the theater. That he had been running the theater for three years; that it was a regular theater, where they had dancing, singing, and do tricks; that the actresses who performed there lived in the theater—the women living on one side, which had no connection with the other, and that no men were allowed in the part of the building where the women lived; that the way Agnes Couch came to Tampa, Massell had agreed to book his theater, and that he sent tickets, at Massell's request, to Atlanta for actresses to come; that on the day Agnes Couch reached Tampa he was at home, and had received a telephone message that a lady wanted to see him, and that he went, and had the following conversation. She said, meaning Agnes Couch, "I want to see the boss." I said, "I am the boss." She said, "I book this theater from Atlanta for four weeks at twenty dollars a week." I said, "What time do you want to go to work?" She said, "Monday, the eleventh." I asked her then if she was going to stay there until Monday, or somewhere else. She said, "Your contract was for all performers to stay in the house, and that she would like to see her room, as she had been on the road all night." I went upstairs and asked the housekeeper if the room was ready, and she said that the corner room was, so I let Agnes Couch go there. From that time I never saw her until Mr. Thomp-

son, the policeman, came for her. I asked Mr. Thompson what was the matter, and he said, "I got a complaint to make. I am going to take this lady from here." I told him, "All right; to take her away, and I never saw her no more." The next morning she sent for her trunk. I never made any improper proposals to Agnes Couch or fondled her in any way. I never saw her before that morning I met her at the theater (page 29 of Record).

The rules (see printed copy of letterhead attached to transcript as Exhibit A, page 26 of Record) of the theater, and which are enforced, are not to allow men to visit the women in the building. The women's part of the house was run by a woman, Miss Ray Lewis; she was the housekeeper.

Athanasaw testified he was fifty years old.

The defense then introduced as a witness one MITCHELL SAMPSON, one of the defendants, who, in substance, testified as follows:

That he was Louis Athanasaw's partner in the Imperial Theater; that he was not in Tampa at the time Agnes Couch came, or at the time she left. He left Tampa on the 9th and never saw Agnes Couch; that the letters attached to Massell's testimony were written by me. He only intended Massell to send actresses to perform in the theater.

The defense then introduced as a witness RAY LEWIS, who, in substance, testified that she was the housekeeper in the theater at the time Agnes Couch was there; that no men were allowed to visit the rooms where the women performers slept or lived; that the rooms were entirely under her supervision, and that she never saw any men in those rooms at all.

This was substantially all the testimony.

The questions raised by the defendants, and to be decided by this court, are, briefly, as follows:

First. The White Slave Act is unconstitutional.

Second. Certain errors claimed to have been committed by the court in instructing the jury both in the refusal to give certain charges requested by the defendants and in the giving of certain charges by the court of its own motion.

ARGUMENT.

The first assignment of error (Transcript, p. 15) was that the court erred in overruling the demurrer of the defendants to the indictment and to each count thereof.

The demurrer to the indictment, which is found upon page 11, Transcript, under subdivision A thereof, sets out the following grounds:

The act of Congress under which the indictment is found is unconstitutional and void:

First. For the reason that there is no grant of power by the Constitution to Congress to legislate upon the subject.

Second. Because the said act of Congress in no way directly affects any subject-matter over which Congress has jurisdiction.

Third. Because the act sought to be punished by the act of Congress is one wholly within the police power of the several States.

The second assignment of error is that the court erred in holding that the act under which the defendants were prosecuted, being an act of Congress commonly called the "White Slave Act," was constitutional.

The fourth assignment of error is that the court erred in denying the defendants' motion in arrest of judgment.

The motion will be found upon page 13 of the Transcript, and contains the following grounds:

First. The act of Congress under which the indictment in this case is found is unconstitutional.

Second. The act of Congress under which the indictment

is found is not within the powers delegated to Congress by the Constitution of the United States.

The question, therefore, to be discussed, under the First Assignment of Error, raised in the several ways above stated, is whether the act of Congress under which the defendants were indicted is constitutional.

We contend that the said act is unconstitutional, first, for the reason that it violates Article IV, section 2 of the Constitution of the United States, which reads as follows:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Secondly, we contend that the act is unconstitutional in that it violates the Ninth Amendment to the Constitution of the United States, which reads as follows:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Third. We also contend that the said act of Congress under which the defendants were indicted is unconstitutional in that it violates the Tenth Amendment to the Constitution, which reads as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Addressing ourselves to this point we contend, first, that the act of Congress violates Article IV, section 2, of the Constitution.

We contend that, under the Constitution of the United States, every citizen thereof has the right to travel at pleasure from one State to another, and the only power of Congress to deal with this right is that given by the Consti-

tution to Congress in reference to the extradition of fugitives from justice from one State into another. The intent, or the motive, that actuates the citizen in making a journey from one State to another is not a matter upon which Congress has the power to legislate.

Upon this subject, and this fundamental right, the argument of Honorable John Randolph Tucker, of Virginia, in his book upon the Constitution of the United States, found upon the pages hereinafter enumerated, is so terse and clear that we will ask the indulgence of the court to quote from it at large.

Page 530, volume 2, of said work, paragraph D, reads as follows:

"But there is another general clause of the Constitution which is clearly a denial of any such power by Congress. It declares that 'Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.' In considering the meaning of this clause we must anticipate, in some respects, be more appropriately discussed hereafter. It will be perceived that this is a declaration of the personal right of every citizen, and belongs to him as such. No Federal or State law gives it to him; he holds it by the higher title of the Constitution itself. If, therefore, any regulations of commerce should invade the right conferred by this article, it would be, under Judge Marshall's canon, prohibited to Congress by the Constitution. It is a personal right which neither Congress nor a State can impair. It gives to a citizen in any State a passport to every other, and confers upon him the privileges and immunities which attach to the citizen of that other. The broad scope of this clause can be obtained from the history of its adoption. Under the Articles of Confederation, which brought the States and the people of the States into close and intimate relations, which were intended to be more close and more intimate under the more perfect union formed by the Constitution, it was incorporated in the following words: 'The better to secure and perpetuate mutual

friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and egress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State to any other State of which the owner is an inhabitant; provided, also, that no imposition, duties or restriction shall be laid by any State on the property of the United States, or either of them.'

"If any person guilty of, or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall upon demand of the Governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.'

"Full faith and credit shall be given in each of these States to the records, acts and judicial proceedings of the courts and magistrates of every other State.'

"Mr. Madison, in the *Federalist*, refers to this fourth article of Confederation, and indicates very clearly that the words 'privileges and immunities' written in this clause of the Constitution were deemed sufficient to include all the specific privileges of trade, etc., which were embodied in the fourth article of Confederation. This article of the Constitution was proposed in Mr. Pinckney's first plan in the words of the present clause of the Constitution; and was reported in the same form from the Committee of Detail, and by the Committee of Style, and was finally incorporated into the Constitution without change. That this clause of the Constitution was intended to be a condensed statement of all the particulars mentioned in the Articles of Confedera-

tion cannot be doubted. If so, the right of the people of each State to have free ingress and egress to and from every other State, and to enjoy therein all privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, with the power of removal of the property of a citizen in one State to any other State of which the owner might be an inhabitant, is undoubted. Mr. Justice Washington, in *Corfield vs. Coryell*, defines these words 'privileges and immunities' in language which has been accepted with judicial approval ever since. He says they are intended to embrace rights fundamental in their nature, such as belong of right to the citizen of any free government; to secure 'protection by the Government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety,' etc. This definition was approved by Chief Justice Taney in the *Passenger cases*, by the court, speaking by Justice Field, in *Paul vs. Virginia*, and by the decision of the Supreme Court, through Mr. Justice Miller, in the *Slaughter-House cases*, citing the case of *Ward vs. Maryland*."

In paragraph 256, of the same work, the following language is found:

"Mr. Justice Miller, in the *Slaughter-House cases*, *supra*, says distinctly that the purpose of the fourth article of the Confederation and of the clause of the Constitution is the same; 'and that the privileges and immunities intended are the same in each.' In the Articles of Confederation 'we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.' He further declares that these privileges and immunities were those within the province of the State itself where the privileges and immunities were claimed; that the 'entire domain of the privileges and immunities of citizens of the States, as above defined lay within the constitutional and legislative power of the States, and without that

of the Federal Government.' It is, therefore, obvious that this right conferred by the Constitution upon the citizens of each State included free ingress and egress of persons and property and the like, and put them beyond the reach of the power of the States, and, *a fortiori*, beyond the power of the Federal Government. The power, therefore, of Congress to tax or prohibit interstate commerce, including the intercourse of persons, did not exist in Congress or in the States. Congress may regulate such commerce so as to promote it and secure its safety, but cannot forbid it or tax it.

"In a dissenting opinion in *Stoutenburgh vs. Hennick*, Mr. Justice Miller relies upon this construction of the clauses to the rights of a citizen as being a limitation upon the power of the States to tax drummers.

"These considerations conclusively show that the power to regulate interstate commerce is not commensurate with the power of Congress to regulate foreign commerce; and while it may prohibit the *transitus* of persons from foreign countries into the United States as a whole, and prohibit commerce in things by embargo, yet no such power is vested in Congress as to interstate commerce. A confirmation of this conclusion might be derived from the requirement of uniformity of duties, imposts and excises; and from the prohibition upon Congress of making any regulation of commerce which would give preference to the ports of one State over those of another. The whole Constitution, in all of its parts, looks to the security of free trade in persons and goods between the States of the Union, and by this clause prohibits either Congress or the States to interfere with this freedom of intercourse and trade."

To the same effect, the Supreme Court of Alabama, in volume 71, page 499, in the case of *Joseph vs. Randolph*, in passing upon an act of the legislature of Alabama which forbade any person to employ or induce laborers to leave certain counties for the purpose of removing them from

the State without paying a designated license tax, declared the act was unconstitutional.

The first head-note of the said decision reads as follows:

"Under constitutional provisions, both State and Federal, every citizen of the United States and of the several States of the Union, has, as an attribute of personal liberty, the right of free egress from, and transit through the State, unless restrained by due course of law; and this right is subject only to such legislative regulations as may be imposed by the exercise of the police power of the State, or as may remotely affect it in the legitimate exercise of the power of State taxation."

To sustain this proposition the court of Alabama cites *Cooley on Constitutional Limitations*, section 342, and also quotes Sir William Blackstone to the following effect:

"The power of locomotion, of changing situation, or of moving one's person to whatsoever place one's inclination may direct, without imprisonment or restraint, unless by due process of law."

And this court, in the case of *Crandall vs. State of Nevada*, 6 Wallace, page 35, held "the right of passing through a State by a citizen of the United States is one guaranteed to him by the Constitution, and must be sacred from State taxation."

"All the citizens of the United States, as members of the same community must have the right to pass and repass through every part of it without interruption as freely as in their own State."

See also the case of *Paul vs. Virginia*, 8 Wallace, page 168; *U. S. vs. Harris*, 16 Otto, page 629.

It might be contended by the Government that the argument herein expressed is not applicable for the reason that the act itself does not prohibit the woman or girl from making the interstate trip, but only prohibits any person aiding,

assisting, procuring or inciting her to make the trip. It would be an unheard-of proceeding that it should be a crime for a citizen to aid another in doing a perfectly lawful act. Therefore, if Congress has not the power to prohibit the woman or the girl from traveling in interstate commerce for the purpose specified in the act, clearly it is beyond its power to prohibit a person *from* aiding, assisting, or procuring the person so to travel. If the girl, or the woman, has the inherent right, under the Constitution, as we think the authorities show she has, to travel from one State to another, any citizen has the right to aid her in so traveling.

Power to Regulate Interstate Commerce.

It may be contended, however, by the Government that the power to pass this act is delegated to Congress by virtue of that clause in the Constitution of the United States being found in the first article of the Constitution, in section five, wherein the power is delegated to Congress to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

In considering whether this section gives Congress the power to pass this act, it is first well to consider the difference in the power granted to Congress to regulate commerce with foreign nations, and that to regulate commerce among the States. The power, in the one case, is vastly greater than the power in the other case. And, the fact that the Government of the United States has the power to either prohibit alien prostitutes from coming into the country, or to deport them from the country, would not give it the same power in reference to prostitutes traveling from one State to another.

Tucker on the Constitution, in discussing this question, on page 528 of the second volume of his work, says:

"But does the power so extensive in its reach as to foreign commerce have the same interpretation as to

interstate commerce? A negative answer must be given to this question. The considerations which justify this conclusion are too important to be omitted.

"Under the Articles of Confederation the States could interdict trade *inter se*. The grant of power to Congress to regulate interstate commerce was with the purpose not to transfer this power of interdicting interstate trade to Congress, but to leave interstate commerce free, as the Constitution intended, in order to form a more perfect union. Could the Constitution have intended to destroy the freedom of interstate trade by Congressional power, when it took it from the States and vested it in Congress in order to prevent such destruction? In the case of *Railroad Company vs. Richmond*, Mr. Justice Field, speaking of this purpose in language which authorized the preceding statement, distinctly says: 'The power to regulate commerce among the several States was vested in Congress in order to secure equality and freedom in commercial intercourse against discriminating State legislation; it was never intended that the power should be so exercised as to interfere with private contracts not designed at the time they were made to create impediments to such intercourse.' Again, he says it was 'designed to remove trammels upon transportation between different States which had previously existed, and to prevent the creation of such trammels in future.' And, in speaking of the acts of Congress called in question, he says: 'They were intended to reach trammels imposed by State enactment or by existing laws of Congress.'

"If it is objected that the phrase to 'regulate commerce' may mean the same power in reference to interstate trade as it does as to foreign trade, the answer is very easy. These regulations of commerce of either kind may be made by law, if the law be necessary and proper to carry the power into execution. A law that is necessary and proper to protect our vessels and the property engaged in foreign commerce against foreign enemies would not be necessary or proper as to interstate trade in a union be-

tween friendly States united under the Constitution. The word 'proper' means, says Judge Story, in the clause cited by Chief Justice Chase, '*bona fide* appropriate.' He says it is at once admonitory and directory. Can it be '*bona fide* and appropriate' in the exercise of a power which is delegated to make a 'more perfect union' between the States, to pass a law which would disunite the States by antagonistic commercial relations between them? Can it be appropriate to the end of 'domestic tranquillity' to sow the seed of controversy and rivalry between them in their trade *inter se*?

"When we look at all powers vested in Congress as trust powers to be used for the States as beneficiaries and as members of one family of Commonwealths, so to be used as to promote union and not disunion; to establish harmony and peace and not discord and hostility between the States, it must be inevitably predicted that the courts will never hold any law of Congress, which prohibits, restricts or ties interstate commerce, to be either necessary or proper as a regulation of commerce, but they must hold it to be a perversion of its trust power to the subversion of the fundamental principles of the Constitution. The power to regulate foreign and interstate commerce was given in the same terms *diversis intuitu*. In the first, to protect all against the machinations of foreign enemies; in the second, to protect and promote the free and unobstructed movement of men and things between the States in the family of the Union."

In construing the power to regulate commerce, all other provisions of the Constitution must be considered; and, therefore, where the Constitution, as it does by article four, section two, gives a certain right to a citizen of the United States, power of Congress to act is limited to that extent.

And, again, the power to regulate commerce between the States, in our judgment, was never intended to apply to the person himself in moving from State to State, but only to the regulation of the vehicle, fare, etc., and the provision

of any statute interfering with this right is void, and the power to regulate commerce only applies while the interstate carriage is going on, and to those matters that are intimately connected with the interstate carrier.

This act, in terms, does not seek to prevent a prostitute traveling from one State to another, or while she is upon the vehicle of interstate carriage, nor does it seek to prohibit a carrier from transporting her, nor does it seek to punish an innocent girl being transported for the purposes prohibited in the act, nor does it seek to punish the carrier for carrying; it only punishes the person living in one or the other of the two States involved who, in fact, under the terms of the act, may never leave the State of which he is a resident and in no way come in contact with the interstate carrier. In other words, the act has no reference whatever to those matters of interstate commerce delegated to the power of Congress, but indirectly punishes a citizen of a State for committing a crime in the State of which he is a citizen.

Said act conflicts with the Ninth and Tenth Amendments to the Constitution and infringes the reserved police power of the State.

We contend, again, that the act of Congress under which the defendants were indicted is not passed under any power given to Congress by the Constitution, but is directly in conflict with the Ninth and Tenth Amendments to the Constitution, which reserved to the States severally the powers not delegated by the Constitution to the United States, and not by the Constitution prohibited to the States. The last analysis of this act can show only one thing, and that is that it is an effort upon the part of Congress to enact and enforce a police regulation for the protection of the citizens of the several States, and not for the purpose of regulating commerce between or among the States. The right of the protection

of the morals of the people of the several States is a right reserved to each State, and is not only not delegated to Congress, but is by the terms of the Constitution taken away from the Congress of the United States.

We desire to call the court's attention to the case of *Joseph Keller vs. United States*, reported in the 29th volume Supreme Court Reporter, page 470. The head note of that case reads as follows:

"Congress had not the power to enact the provisions of the act of February 20, 1907, for the criminal punishment of the mere keeping, maintaining, supporting, or harboring, for the purpose of prostitution, any alien woman within three years after she shall have entered the United States."

The purpose of the "White Slave Act," under consideration, is precisely the same as in the act set out in the Keller case. It is an attempt upon the part of Congress to regulate the morals of the citizens of the several States, and is beyond the constitutional power of Congress.

Mr. Justice Brewer rendered the opinion in the last-mentioned case, and his language throughout the opinion is peculiarly apt to the act under discussion. The closing part of that opinion reads as follows:

"Although Congress has not largely entered into this field of legislation, it may do so, if it has the power. Then we should be brought face to face with such a change in the internal conditions of this country as was never dreamed of by the framers of the Constitution. While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced. To exaggerate in the one direction and restrict in the other will tend to substitute one consolidated government for the present Federal system. We should never forget the declaration in *Texas vs. White*, that 'the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.'"

We beg leave again to quote the language of the present Chief Justice of this court in the case of *Howard vs. I. C. R. Co.*, reported in 28th volume Supreme Court Reporter, and that portion of the language contained in paragraph three, page 147, reading as follows:

"It remains only to consider the contention which we have previously quoted, that the act is constitutional although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that, because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which, from the beginning, have been, and must continue to be, under their control so long as the Constitution endures."

We beg to call the court's attention to the opinion of the Supreme Court of the United States in the case of the *City of New York vs. Miln*, 11 Peters, 102, where the court, on page 139, uses this language:

"We plant ourselves on what we consider impregnable positions. They are these: A State has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, when

the jurisdiction is not surrendered or restrained by the Constitution of the United States. That by virtue of this it is not only the right but the bounden and solemn duty of the State to advance the safety, happiness and prosperity of its people, and to provide for their general welfare, by any and every act of legislation, which it may deem conducive to these ends, when the power over the particular subject or the manner of its exercise is not surrendered or restrained in the manner just stated. That all those powers which relate to mere municipal legislation, or what may perhaps more properly be called internal police powers, are not thus surrendered or restrained; and consequently in relation to these, the authority of a State is complete, unqualified and exclusive. If we were to attempt a definition of this internal police [power] we should say every law came within this description which concerns the welfare of the whole people of the State or of any individual within it; whether it related to their rights or their duties: whether it respected them as men or as citizens, whether in their public or private relations; whether it related to the rights of persons or of property, of the whole people of the State or of any individual within it; and whose operation was within the territorial limits of the State and upon persons and things within its jurisdiction."

See, also, sustaining this proposition *State vs. Ry. Co.*, 27 W. Va., page 783.

If it be conceded that Congress has the power to prohibit the carriage of persons or property in interstate commerce solely on account of the intent of the person procuring or aiding the transportation, then the entire police power of the States severally will be absorbed by the National Government. In other words, Congress would have the power to prescribe that if a person imported from another State a pistol, with the intent when it had reached its destination to commit murder, that he should be guilty of a crime. It would have the power to create offenses unlimited.

The Government will probably contend that the Lottery

Case, 188 U. S., page 22, is authority upon which the court should sustain the present act. We beg, however, to dissent from this proposition. In the first place, the Lottery Case involved the transportation of a commodity, and the regulation thereof was not limited by that provision of the Constitution, article IV, section 2, applicable to persons, because it cannot be contended that a lottery ticket enjoys under the Constitution any privilege or immunity which a man or woman is guaranteed. Again, the Lottery Case was regulating a subject that directly entered into interstate transportation, and was in itself a commodity being transported, and over which Congress had supreme power. The present statute in contradistinction does not punish the carrier for transporting the woman, nor does it punish the prostitute herself, nor does it punish anything that occurs during the transportation; but it punishes a citizen of a State who in no way passes over the interstate carrier, and if he commits any crime at all it is a crime against the sovereignty of the State in which he resides and not against the Federal Government at all.

Decisions of the United States Courts Sustaining the Constitutionality of the Act in Question.

We find upon consideration that the first time the constitutionality of this act was drawn in question was November 17, 1910, in the case of the *United States vs. Westman*, 182 Federal Reporter, page 1017, the court there sustaining the constitutionality of the act.

It will be noticed in reading the decision that the court did not take into consideration at all article IV of section 2 of the Constitution in rendering its decision, nor did it discuss in any way to what extent article IV, section 2, of the Constitution modified the commerce clause of the Constitution. The court also further failed to take into consideration the due weight to be given the language of the previous decisions of the Supreme Court in considering com-

merce in regard to persons. As we read those decisions there is no enunciation by the Supreme Court that Congress has the right to regulate the passage of persons from State to State. What they did hold is that Congress has the right to regulate the transportation—that is, the facilities, the rates of fare, and things of that kind.

The statute again came up for consideration in the case of *United States vs. Warner*, 188 Federal, page 682. In the decision there Judge Holt, who rendered the decision, stated that if it was an original question in his opinion the act would be unconstitutional, but he felt himself bound by the previous decision in the 182 Federal and by the Lottery Cases and the Passenger Cases in 7th Howard.

We have attempted in other parts of this brief to draw a distinction between the Lottery Cases and the case at bar, and in the decision rendered by Judge Holt the modification of the commerce clause by article IV, section 2, of the Constitution is not referred to.

The next time the statute reached the courts for consideration was in the case of *Bennett vs. United States*, 194 Federal, page 630. In this decision the court does not seem to have noticed the modification of the commerce clause of article IV, section 2, of the Constitution, and again the court in its opinion makes this statement in regard to the act under consideration:

"The primary thing forbidden is the inducing of a person to come into a State with unlawful purpose by the inducer, and in aid of such unlawful purpose, but without direct regard to the innate character or purpose of the person induced. It is this primary thing, and the incidental transportation by the carrier, which are forbidden and penalized."

If this is the real meaning of the act, we feel unhesitatingly that the act is unconstitutional, because under the commerce clause the primary purpose must be the protec-

tion of interstate commerce and not the enforcement of the police regulations incidental to such commerce.

The same court uses again the following language:

"We do not find in the statute either the purpose or fear to interfere with the police powers of the State. The law is directed only against the inducing or performing of interstate transportation, and this entire subject is obviously not within the scope of the police power of any State, hence its exercise cannot be the invasion of such power."

We think clearly in this expression that the court misconstrues the power of Congress under the commerce clause of the United States. If the law be directed solely against the inducing or performing of interstate commerce, it is merely incidental to interstate commerce, and is not the proper matter of regulation by Congress, but the inducer should be left to be dealt with by the police power of the State.

Again this act came before the court for consideration in the case of *Kalen vs. The United States*, 192 Federal, page 888.

In reading the opinion in this case it will be found that the court did not really consider the constitutionality of the act as a new question, but held itself bound by the decisions of the court in the case of *United States vs. Westman*, and *United States vs. Warner*, *supra*, and the earlier decisions of *Gibbons vs. Ogden*, and the *Passenger Cases* in 7th Howard, and we have heretofore shown to the court the weight and effect that should be given to said decisions.

We take it that it is incumbent upon this court now to consider the constitutionality of this act as a question of first instance, and the decision of which will necessarily have far-reaching effect upon the respective powers of Congress and that of the several States. We cannot conceive of any question that has within recent years been presented to this court that would require greater consideration in its ultimate determination.

Errors Assigned upon Instructions Given by the Court.

The indictment in this cause was framed under sections 2 and 3 of the act of June 25, 1910, known as "The White Slave Act," as contained and published in the laws of the United States of 1910, beginning on page 825, the two sections reading as follows:

"SEC. 2. That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by both such fine and imprisonment, in the discretion of the court.

"SEC. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing or coercing any woman or girl to go from one place to another in

interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five years, or both at the discretion of the court."

Before discussing *seriatim* the errors assigned upon the instructions we desire to call the court's attention generally to the act.

It will be noticed that this act punishes any person who either transports, or causes to be transported, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose in section 2, and in section 3 the act punishes any person who knowingly persuades, induces, entices or coerces or causes to be persuaded, induced, enticed or coerced, or aids or assists in persuading, inducing, enticing or coercing any woman or girl to go from one place to another in interstate commerce for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent of such person that said woman or girl shall engage in the practice of prostitution or debauchery, or in any other immoral practice.

The court will further notice that the Congress of the United States calls this act, in the act itself, the "White Slave Act." The first question to discuss, therefore, is the meaning of the words "prostitution," "debauchery," and "other immoral practice" as used in this act.

We do not presume there can be any room to doubt the meaning of the word "prostitution." We also do not think there can be any reasonable discussion over the word "debauchery," as the same has acquired previous to its use in this statute a well-known common-law meaning, to wit, sexual intercourse between a man and a woman.

See Anderson's Law Dictionary, page 314; also Abbott's Law Dictionary, vol. 1, page 348.

In Lewis' Sutherland Statutory Construction, volume 2, page 757 (second edition), section 398, the author in discussing the meaning of the words in a statute uses the following language:

"Where a statute uses a word which is well known, and has a definite sense at common law, or in the written law, without defining it, it will be presumed to be used in that sense, and will be so construed unless it clearly appears it was not so intended. Words having a precise and well-settled meaning in the jurisprudence of a country are to be understood in the same sense when used in statutes, unless a different meaning is unmistakably intended."

The word "debauch" having, as we have shown, a well-settled meaning at the common law and in the jurisprudence of the United States, it must be taken to have been intended in that meaning in the statute under discussion; but further than this the whole act shows that the word was used in this sense, and there is nothing in the context of the act to show that it was used in any other sense.

We call the court's attention here to the fact that throughout the indictment in this case the only statutory word used defining the criminal act of the defendants is the word "debauchery." The word "prostitution" is not referred to in the indictment, nor of "any other immoral practice" set up in any charge of the indictment; therefore in order to convict the defendants in this case the Government had to prove that the girl in this case was transported in interstate commerce for the purpose of debauchery.

In the light of some of the instructions given by the court, which will be hereinafter discussed, although we think inapplicable, owing to the restricted charge in the indictment, the meaning of the words "engage in other immoral practice," Mr. Lewis' Sutherland Statutory Construction, volume 2, section 422 (second edition), uses the following language in regard to the construction of such words in a statute:

"Where there are general words following particular and specific words, the former must be confined to things of the same kind. This is known as the rule or doctrine of *ejusdem generis*. Some judicial statements of this doctrine are here given. When general words follow an enumeration of particular things, such words must be held to include only such things or objects as are of the same kind as those specifically enumerated."

The statute in this case having set out prostitution and debauchery, these particular words with the general words, "and other immoral practice," the words "other immoral practice" must be construed to mean practices similar in character to debauchery or prostitution, and they cannot be used to enlarge the meaning of the statute to other practices than those of a similar kind.

Again, by virtue of the enacting law containing a name to be given it, to wit, "The White Slave Act," by no method of construction can the words "other immoral practice" be construed to mean anything broader than prostitution and debauchery, or similar practices.

With these general observations we proceed to discuss the instructions refused and given by the court to which exceptions were taken *seriatim*.

The fifth assignment of error is that the court erred in refusing to instruct the jury at the request of the defendants as follows:

"The court instructs the jury that before they can find the defendants or either of them guilty under the indictment in this cause it must be satisfied be-

yond a reasonable doubt from the evidence that the defendants, or one of them, procured or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida; and that at the time of the procuring or aiding in the procuring of said transportation the defendants, or one of them, had the intent at that time either themselves to debauch the said Agnes Couch, or to procure her debauchment by some other person, or that they intended to induce, entice, or compel the said Agnes Couch to give herself up to debauchery."

The above charge, as requested, will be found in the bill of exceptions, on page 30 of the transcript.

Clearly the court erred in refusing to give this instruction.

The act of Congress attempts to punish a person for knowingly procuring or aiding in the procuring of the transportation of a female for the purpose of debauchery. The gist of the offense being the *intent* of the person aiding in procuring the transportation, and unless the facts set out in the foregoing charge were found to be true the jury had no right to convict the defendants. It is true that the act of Congress provides that if a person procures the transportation in interstate commerce of a woman or girl to become a prostitute, or to give herself up to debauchery, or to engage in any other immoral practice, he shall be punished as set out in the act. But even if the expression "in other immoral practice" would include any act other than prostitution and debauchery (in the case at bar there was no charge in any of the counts of the indictment of any other purpose save that of debauchery), therefore the charge requested was clearly correct.

The sixth assignment of error is that the court refused to charge the jury as follows:

"The court further instructs you that the word 'debauch,' as used in the act of Congress under which the defendants are indicted, and in the indictment in this case means sexual intercourse between a man and a woman."

The request for this charge will be found in the bill of exceptions on page 30 of the record.

The definition of the term "debauchery" as requested in the foregoing charge is the only legal definition we know of. See Abbott's Law Dictionary, volume 1, page 348, where the word is defined in the terms requested in this charge, to wit:

"DEBAUCH. To entice, to corrupt, and when used of a woman to seduce. Originally the term had a limited signification, meaning to entice or draw one away from his work, employment or duty, and from this sense its application has enlarged to include the corruption of manners, and violation of the person. In its modern legal sense the word carries with it the idea of carnal knowledge, aggravated by assault, violence, seduction, ravishment."

See also Anderson's Law Dictionary, page 314, where the term is likewise defined:

"DEBAUCH. In French *debauche* from the shop; to entice away from work or duty. To entice and corrupt. Referring to a woman it first meant to seduce, then to seduce and violate, in which two-fold sense it is used in the law."

See also the work on Words and Phrases Judicially Defined, volume —, page 1863, where the definitions of this word are given, and they coincide with that hereinbefore set out.

It is a principle of law so well settled that no authorities need be cited to sustain that wherever a technical word is used in a statute, unless the context shows the word was used in a different sense, the word is used in its technical meaning; and more aptly does this apply to the statute under consideration, for the reason that Congress in passing the law under consideration called it "The White Slave Act," and even the popular meaning of the "White Slave Act" shows that the word "debauch" was used in the technical and legal sense above referred to.

The seventh assignment of error is that the court refused to charge the jury as follows:

"If the jury have a reasonable doubt from all the evidence in this cause that the defendants did not intend at the time of the procuring of the transportation to either themselves debauch the said Agnes Couch, or procure her debauchment by some other person, or to induce, entice, or compel the said Agnes Couch to give herself up to debauchery, then the jury must acquit the defendants."

This charge, and the refusal thereof, will be found on page 31 of the transcript.

Certainly the court erred in refusing this charge, as it was simply an instruction to the jury to find the allegations of the indictment true in order to convict.

The eighth assignment of error is the court erred in charging the jury as follows, to-wit:

"The court instructs you that before you can find the defendants or either of them guilty under the indictment in this case, you must be satisfied beyond a reasonable doubt from the evidence that the defendants, or one of them, procured, or aided in the procuring of transportation for Agnes Couch from Atlanta, Georgia, to Tampa, Florida, and at the time of the procuring or aiding in the procuring of said transportation the defendants both or one of them, had the intent at the time to employ said Agnes Couch in a position and put her under conditions which would induce or incite her to be led into a condition of debauchery that would tend to immoral sexual intercourse."

This charge of the court will be found in the bill of exceptions on page 31.

The judge, in giving this charge to the jury, went far beyond the charge in the indictment and the act of Congress. The act under consideration did not prohibit the transportation of a person in interstate commerce for the purpose of

placing her in a position and putting her under conditions which would induce or incite her to be led into a condition of debauchery, or that would tend to immoral sexual intercourse. The act of Congress defines, and the indictment charged in each of its counts, that the defendants either transported or aided in the transportation of the girl for the purpose of debauching her, or causing her to be debauched, or entering into a state of debauchery. It is clear that the court in its charge went far beyond the offense defined by the act of Congress.

The ninth assignment of error is that the court erred in charging the jury as follows:

"Now, gentlemen, the Congress of the United States has provided that any person who shall transport or cause to be transported or aid or assist to obtain transportation in interstate commerce (which means from one State to another) of any woman or girl for the purpose of debauchery, shall be guilty of a felony, and upon conviction shall be punished in accordance with law. Unquestionably this act although it originated for the purpose of protecting these poor unfortunate women, who, by accident or otherwise had placed themselves under the control of unscrupulous persons, yet the language of the law is direct and positive in its terms and meaning, and should be construed to do everything that the United States Congress has a legal right to do and has used language with the intention to prevent and break up vice and immorality."

This instruction of the court will be found on page 31 of the record.

The court in giving this charge to the jury in substance told the jury that the act of Congress should be construed to do everything that the United States Congress has a legal right to do, and has used language with the intention to prevent and break up vice and immorality. Certainly the act of Congress did not do anything of the kind. The act of Congress was made solely to prevent the transportation of

women with the intent of their engaging in either prostitution or debauchery, or other immoral purposes, and the other immoral purposes certainly could not be extended to include anything beyond debauchery and prostitution or, in other words, sexual vice. There was no intent on the part of Congress in this case to prohibit the transportation of women who engaged in any other vice or immorality other than that applicable to sexual relations.

See preceding discussion generally of the act of Congress under discussion.

The tenth assignment of error is that the court erred in charging the jury as follows, to wit:

"It has been proven and admitted that Agnes Couch came to Tampa at the procurement of the defendants who furnished her transportation by furnishing tickets for that purpose. The only remaining question is whether Agnes Couch was brought here for the purpose of debauchery; that is the vital point in this case; and in determining it you will examine carefully all of the testimony in connection with the procuring of her coming. It is to a certain extent a case of circumstantial evidence; not positive and direct, but circumstantial, to be determined by all of the circumstances surrounding it. And you will examine in determining this question the position into which she was brought, the condition in which she found herself when she came, and the necessary result of such conditions; and determine from all of the testimony what was the purpose of bringing her here, whether or not it was to entice or induce her to give herself up to a life of debauchery."

Which charge will be found on page 32 of the record.

The court in substance instructed the jury in this charge that if the jury found that the position in which the girl found herself when she reached Tampa was such that the necessary result of such conditions was that the purpose of bringing her here was to entice or induce her to give herself up to a life of debauchery, then in that event the defendants

should be convicted. In this charge the court clearly went beyond the purview of the act, as the act in no way defines the position that the female shall be placed in when transported, but requires that at the time transportation is procured or undertaken the intent shall exist in the mind of the person indicted to either debauch or induce or incite the woman to become debauched, or engage in prostitution, and this was also the charge in the indictment.

The eleventh assignment of error is that the court erred in charging the jury as follows, to-wit:

"The intent and purpose of the defendants at the time of the furnishing of this transportation for Agnes Couch is the very gist and question in this case. Did they intend to induce or entice or influence her to give herself up to debauchery? It makes no difference whether the profits which would be made by the defendants came from the sale of liquor or other immoral purpose. The question here is of intent; what was the intent with which they brought her; that she should live an honest, moral and proper life? or that she came and they engaged and contracted with her for the purpose of her entering upon a condition which might be termed debauchery or leads to or would necessarily and naturally lead her to a condition of debauchery just referred to."

Which charge is found on page 32 of the transcript of the record.

The court in substance charged the jury in this instruction that the question for them to determine was whether the defendants brought the girl or procured her to be brought to Tampa in order that she might live an honest, moral, and proper life, or that she came, and that they engaged and contracted with her for the purpose of her entering upon a condition which might be termed debauchery, or tend to or would necessarily and naturally lead her to the condition of debauchery just referred to. Certainly the act of Congress did not do anything to punish such act as de-

fined by the court above. In order to convict the defendants it was essential for the Government to prove that at the time the defendants procured or aided in the procuring of the transportation of this girl they intended to either debauch her themselves or to incite or induce her to enter into a life of debauchery.

From reading the testimony in this case (see Record, page 29, of testimony of Athanasaw, and also Record, page 23, the testimony of Agnes Couch, and Record, page 25, testimony of Sam Massell) it will be seen that the defendants operated in Tampa a variety theater, in which liquor was sold in the boxes of the theater, and that the women acting in the theater sold the liquor. Under the charge of the court, if the facts were found to be simply that the defendants operated such a theater, and that the women sold liquor therein, and that there never was or had been any act of sexual immorality committed in the building, or intent on the part of the defendants that the women or girls should engage in any act of immorality sexually, the jury in this case would still have been warranted in finding the defendants guilty, and such conviction is clearly in violation of both the law itself and the charge in the indictment.

The twelfth assignment of error is that the court erred in charging the jury as follows, to-wit:

"The term debauchery is not a legal or technical term. There is no allegation that the defendants brought her here with the purpose or with the intent to debauch her; but to induce her or entice her, or influence her to enter upon a course of debauchery. The term debauchery is not a legal or technical term. To debauch is to corrupt in morals or principles; to lead astray morally into dishonest and vicious practices; to corrupt; to lead into unchastity; to debauch. Debauchery then, is an excessive indulgence of the body; licentiousness, drunkenness, corruption of innocence, taking up vicious habits. The term debauchery, as used in this statute, has an idea of sexual immorality; that is, it has the idea of a life which

will lead eventually or tends to lead to sexual immorality; not necessarily drunkenness or immorality, but here it leads to the question in this case as to whether or not the influences in which this girl was surrounded by the employment which they called her to did or did not tend to induce her to give herself up to a condition of debauchery which eventually, necessarily and naturally would lead to a course of immorality sexually. That is the question for you to determine, and it is a question that you alone can determine. You have heard the testimony in the case in regard to the circumstances in which she was placed. You have viewed the scene where she was employed. You have examined by the testimony and your observation what was the character and what was the condition or influence in which the girl was placed by the defendants. Was or was not it a condition that would necessarily and naturally lead to a life of debauchery of a carnal nature relating to sexual intercourse between man and woman."

This charge will be found in the record on page 32.

We do not see how it is possible for the court to have used the language that he used in this instruction. He in effect told the jury that the word "debauchery," as used in the act of Congress and as used in the indictment, had no meaning known to the law, but was subject to any meaning that the jury or the court saw fit to place thereon. In defining the meaning of the words "to debauch" the court clearly went in the face of every legal definition of the term that we have been able to find.

(See the definitions given by the various law dictionaries hereinbefore referred to.)

Under the court's definition of the word "debauch" if one should bring a girl over interstate commerce for the purpose of teaching her to steal he would thereby cause her to be debauched; or if he brought her into the State to engage in, as the court said in express terms, in any immoral, dishonest or vicious habits he would be guilty of bringing her for the purpose of debauchery.

Again the court told the jury in the same charge that the term "debauchery," as used in this statute, has an idea of sexual immorality; that is, it has the idea of life which will lead eventually or tends to lead to sexual immorality. Clearly the learned judge misconceived the purpose of the act of Congress, and misconstrued the meaning of the English language used in said act.

The thirteenth assignment of error is that the court erred in charging the jury as follows, to-wit:

"Now, it is contended that they must have had a deliberate intent to debauch her when she came here; that either one or the other intended to debauch her or to get somebody else to debauch her. Now, that term debauch is used in a great many instances in law, and the usual connection is to have carnal intercourse with; but there is no such language in this statute, nor is it the language of the indictment. The charge of the indictment in substance is that they induced or influenced her to enter into a life or condition of debauchery—'to induce or compel her to give herself up to debauchery.'"

This instruction will be found on page 33 of the record.

We cannot conceive how it was possible for the court to have given this instruction in the light of the act of Congress under consideration, and the terms used in the indictment. The act of Congress punished a person transporting a girl or woman in interstate commerce for the purpose of prostitution or debauchery, or with the intent and purpose to induce, entice or compel the woman to become a prostitute or to give herself up to debauchery, and the charge in the indictment was that the intent was to induce or entice the girl to give herself up to debauchery, and yet the learned court below charged the jury in these words:

"Now that term debauch is used in a great many instances in law, and the usual connection is to have carnal intercourse with; but there is no such language in this statute, nor is it the language of the indictment."

Clearly this court can see from the charges above set out and complained of that the jury were not instructed to try the defendants for the charge with which they stood indicted, or for any act punishable by the law of Congress, but were under the instructions of the court tried by the jury for doing things foreign to both the indictment and the act of Congress. It cannot be contended with any reason whatever that the word "debauch," used in the act and used in the indictment, was intended to cover any other vice save sexual immorality.

In concluding the argument upon the subject of these instructions we desire again to call the court's attention to the fact that the only prohibition of the act of Congress set up in the indictment was *debauchery*; that there was no charge that the defendants had transported the girl for any other immoral purpose than that of *debauchery*.

For the various reasons above stated we contend that this case must be reversed.

First, because the act of Congress is unconstitutional.

(a) For the reason that it violates section 2 of article IV of the Constitution.

(b) Because the power to legislate, as undertaken in said act, is not conferred by the commerce clause of the Constitution of the United States.

(c) Because said act violates amendments to articles IX and X to the Constitution of the United States.

(d) Because the court erred in the instructions given to the jury, and in the instructions requested by the defendants, and not given by the court.

All of which is respectfully submitted.

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